

**Examining the Efficacy of the Uniform Partition of Heirs' Property Act
in Georgia, Alabama, and Kentucky: A Proof of Concept Investigation**

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Executive Summary

Introduction

This project is a roughly 9 to 10-month, multi-modal examination of heirs' property occurrence and the experiences and perceptions of heirs' property owners and other stakeholders in selected Appalachian counties and selected counties in Georgia and Alabama. Its purpose is to assess the efficacy of the Uniform Partition of Heirs' Property Act (UPHPA) in selected Georgia and Alabama counties and to assess the potential efficacy of the UPHPA in Kentucky - a state where that law was introduced in early 2021. A broader goal of this project is to inform policy recommendations for the 2023 Farm Bill by amplifying issues faced by socially disadvantaged farmers and landowners.

Objectives

This study seeks to address the following five objectives:

1. Analyze whether the UPHPA has affected the number and rate of partition actions in Georgia and Alabama
2. Analyze how the act affects court cases involving heirs' property in Georgia and Alabama by assessing qualitative data about the types of factors, processes, and actors that shape outcomes in cases involving: partition of heirs' property (by sale, in kind, or other means).
3. Assess the frequency of heirs' property and partition actions in Kentucky and identify the types of actors involved in these actions.
4. Assess court cases in Kentucky to glean qualitative data about the types of factors, processes, and actors that shape outcomes in cases involving: partition of heirs' property (by sale, in kind, or other means) or disputes related to mineral rights.
5. Analyze the socio-economic contexts outside the courtroom that affect whether, when, and how families utilize legal remedies in Georgia, Alabama, and Kentucky, by using qualitative data from interviews with affected families and other key actors, and quantitative profiles of county wellbeing.

Methods

Methods vary among counties and states due to data availability and format. However, the study includes some of the following methods for each county:

1. Spatial analysis of CoreLogic and Digital Maps Product data to estimate HP frequency at the county level in each state
2. Collection and analysis of data from court records to estimate the rate of partition actions (where applicable) and quality of partition actions, as well as players and outcomes associated with them
3. Interviews with county experts (tax assessors, Property Valuation Administrators, county clerks, etc.)
4. Interviews with real property/real estate attorneys and/or heirs' property owners/families
5. Collection and analysis of socioeconomic and other data (e.g. mineral rights)

Discussion

The purpose of this study is to assess the efficacy of the UHPA and make recommendations for the 2023 Farm Bill based on our findings. We are approaching this question of the UHPA's effectiveness by looking at trends in partition actions before and after passage of the law and by speaking with attorneys and families who have experience in heirs' property, especially partition actions. We have found relatively few partition actions in our selected counties so far and have learned from several attorney interviews that partition actions are rare. We feel that this suggests a need for recommendations that address issues more commonly faced by heirs' property owners, in addition to bolstering the impact of the UHPA.

Conclusion

The court records searches we performed in Georgia indicated 20 partition actions in our selected Georgia counties between 1990 and 2020. From 1990 through 2012, prior to passage of the UHPA in Georgia, we calculated an average of 0.78 partition actions per year. From 2013 through 2020, we calculated an average of 0.25 partition actions per year, but it should be noted that the small overall number of partition cases across the time period does not allow for robust statistical analysis. The court records searches in Alabama and Kentucky were at the appellate court level and were conducted for the entire states. We found 106 partition cases on appeal in Alabama from 1950 to 2020, three of which occurred after passage of the UHPA in 2014. From 2015 to 2020 there were, on average, 0.5 partition cases brought on appeal, down from a rate of 1.58 partition appeals per year from 1950 to 2014 in Alabama. However, it should be noted that from 2000 through 2014 (the fifteen years preceding the UHPA's passage in Alabama) the rate of partition appeals was already down to 1.0 partition appeal annually, which suggests the UHPA may not be the sole cause of the reduction in partition appeals. In Kentucky, from 1950 to 2020, we found 42 partition cases at the appellate level, significantly fewer than Alabama.

The heirs' parcel frequency estimates we have performed indicate the presence of 889,000 acres of heirs' parcels in Alabama, Georgia, and Kentucky, with an assessed total value of \$1.3 billion. Due to rigid search terms and limitations in the data, we believe these are conservative estimates. Further work is needed in this area to consider data limitations and accuracy and to examine the relationship between heirs' property frequency and other metrics of vulnerability.

All of the attorneys interviewed for this project indicated that the UHPA is an important step in providing protections for heirs facing partition actions, but that it may not be the most widely available or applicable resource for the typical family of heirs' property owners. Nearly all attorneys interviewed stated that family members seeking clarification of heirs' property titles often do not have the resources to afford legal advice and services or the genealogical research needed to normalize the property title, much less the funds to retain an attorney to represent them in a partition lawsuit. These interviews have also revealed that many real property attorneys and judges in Georgia and Alabama may not be familiar with the UHPA, which highlights a need for more continuing education on this law.

Recommendations

At least seven recommendations are emerging from this research. These include the need for:

1. Expansion of information and public funding to assist families with estate planning and title clearance
2. Attorney and court education
3. Legislative reform
4. Data standardization, transparency, and accessibility
5. Heirs' property data collection using Census of Agriculture
6. Long-term monitoring of heirs' property ownership
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Introduction

We address Alcorn State University's Socially Disadvantaged Farmers and Ranchers Policy Research Center's Request for Proposals (RFP) related to heirs' property and the 2023 Farm Bill. This study concentrates on the first research category detailed in the RFP, *impact of the Uniform Partition of Heirs Property Act (UPHPA) in enacting states*. The UPHPA was drafted in 2010 by the American Bar Association's Section of Real Property, Trust and Estate Law to help families avoid negative outcomes associated with the partitioning or division of heirs' property. Our study examines the "efficacy" of the UPHPA by examining its application and impact on partition cases in Georgia and Alabama, and considers its potential impacts in Kentucky, a state where it has not been enacted but was introduced into the state legislature in 2021. Georgia and Alabama were early adopters of the model statute, having approved it in 2012 and 2014, respectively.

The legislation is a direct response to the precipitous loss of African American land over the course of the twentieth century (Mitchell, 2019). These losses are attributed to a variety of factors, including the voluntary separation of African American lands from rural areas and their landholdings (personified by the Great Migration of African Americans out of the rural south from about 1917 to 1970) and illegal takings by ruthless means (Daniel, 2013; Lewan and Barclay, 2001). However, many black land rights advocates also attribute African American land loss to heirs' property ownership and the legal division of such property via court-ordered partition sales (Casagrande, 1986; Craig-Taylor, 2000; Chandler, 2005; Mitchell, 2019). Partition actions involve either a division by sale (aka statutory partition) or partition in kind, or actual land distributions with clearly delineated boundaries (aka equitable partition) in response to a shareholder's request for property separation. In the case of the latter, if a case involves known heirs who agree on land division, partition in kind seems a reasonable way to proceed because these situations typically result in land retention (Chandler, 2005). However, if there are numerous heirs, with weak or nonexistent relations or possibly hostile relations, the process of agreeing on how the land should be subdivided may be highly contested, resulting in a stalemate. In these situations, a court would order a partition sale, resulting in monetary rather than land distributions to co-heirs or shareholders.

In some notable cases (and some not so noticeable), land speculators have acquired partial interests in property from one or more of the co-heirs (any co-heir can sell his or her fractional interest but not the entire property); and that outside entity (now a shareholder) initiates the partition, anticipating a partition sale, with the ultimate aim of acquiring the total property in a closed bidding scenario that includes only heirs and the shareholder. Apparently often, family members have been unable to outbid cash-rich real estate developers, and the family is divested of the land (Rivers, 2007; Chandler, 2005; Baab, 2011). Although most state laws governing property divisions prefer partition in kind over partition sale, far more partition sales occur because of the impracticality often involved in subdividing land with many heirs (Baab, 2011). Historically, if heirs insisted on a partition in kind, the onus was placed upon those making the request to demonstrate that the land can be divided in this manner.

In 2010, the Uniform Law Commission passed the UPHPA, the first legislative effort to garner the backing of the American Bar Association. As such, it represents a comprehensive, rather than piecemeal, redress of problems associated with heirs' property partitions (Mitchell, 2019). It is, however, important to note that before the UPHPA issuance, Alabama, Georgia, and

South Carolina¹ had adopted partition reforms that allowed those heirs not requesting partition to buy out the interests of those heir(s) who did--this stipulation would later become one of three, defining features of the UHPA (Mitchell, 2014; Mitchell, 2019). As of 2020, the UHPA had been adopted by seventeen states and the U.S. Virgin Islands (Uniform Law Commission, 2010). Key provisions are: 1) a buyout option, again, co-heirs not wishing to sell the property can purchase the interests of those wanting to sell; 2) courts must consider both economic and noneconomic factors associated with property in determining whether property should be partitioned in kind or sold, which means that intangible and sentimental attachments to property can be administered as evidence in partition sales; and 3) if co-heirs do not choose the buyout option, the property is sold at fair rather than discounted value.

The UHPA's primary purpose is to provide protections for families involved in partition actions, especially when those actions involve forced sales, but the act does not supplant existing state partition laws in either Georgia or Alabama:

Rather, this Act adds a subpart to the [sic] Georgia's existing equitable and statutory partition statute in that it applies only to actions involving "heirs property" as defined under the Act.... The Act establishes rules, which are designed to provide additional protections against the risk of forced sale and involuntary loss of heirs property (Chastain Baker & McBride, 2013).

Importantly, the UHPA, defines heirs' property as:

real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action: (A) there is no agreement in a record binding all the cotenants which governs the partition of the property; (B) one or more of the cotenants acquired title from a relative, whether living or deceased; and (C) Any of the following applies: (i) 20 percent or more of the interests are held by co tenants who are relatives; (ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (iii) 20 percent or more of the cotenants are relatives (Chastain Baker & McBride, 2013, p.18).

Land Appropriation in Alabama, Georgia, and Kentucky

The Black Belt² region of the South and Appalachia are distinguished by their unique cultures and histories, but both subregions have contended with resource exploitation and land appropriation dating back to the colonial era. Similar to the *Who Owns Appalachia* study of the late 1970s, which revealed that 72% of lands affected by flooding in Kentucky and West Virginia at that time were owned by absentee landowners (Appalachian Task Force, 1983)--Conner Bailey's recent look at timberland ownership in Alabama ([ALtimberlandownership](#)) also revealed that 70% of the land in Alabama is timberland, and that 62% of the state's privately-owned timberlands are held by absentee owners. Further, Bailey et al. (2019) argue

¹ Jerry Pennick, former Director of Land Assistance and Policy Coordinator for African American farmers, landowners, and rural communities with the Federation of Southern Cooperatives/Land Assistance Fund says that buyout options were added to partition laws in Alabama, Georgia, and South Carolina prior to the UHPA. Personal communication.

² A sub-region of southern counties stretching from southern Virginia to east Texas, known historically for its exceptional soil quality (black) and later for higher than average proportions of African Americans (Wimberley, 1991).

that the spatial concentration of these holdings in the state has had detrimental social consequences for local economies and livelihoods because absentee owners pay very low taxes. This, in turn, produces a litany of marginality markers ranging from high poverty rates, to food insecurity, to poorly performing public schools.

Land owned by locals in both the Black Belt and Appalachia is also fraught with insecurities related to tenuous titles. In Black Belt states such as Alabama, this is especially problematic for African Americans and is linked to greater land losses for these populations (Zabawa, 1991; Bailey et al., 2019). National level attention to unstable land titles, tenure, and black land loss was instigated by the 1973 report by the Black Economic Research Center, *Only Six Million Acres: The Decline of Black Owned Land in the Rural South*, which in turn gave rise to the Emergency Land Fund's 1980 investigation of African American black land loss in five southern states--Alabama, Louisiana, South Carolina, Mississippi, and Tennessee, which estimated that 41% of black-owned land these states was heirs' property. By 2017, African Americans were the principal operators of just 3.8 million acres of farmland or roughly one percent of all farms in the U.S. (United States Agriculture Department, 2019). Nembhard and Otabor (2012) report that the rate of black land loss in the South has far exceeded losses for other racial and ethnic groups since the turn of the twentieth century. Zabawa (1991) stresses that reductions in agricultural land ownership in Alabama during the twentieth century mirrored national trends--citing a 98% decline in black-owned farms in the state from 1910 to 1987. Given this disproportionate impact, much of the literature on land losses, illegal takings, and appropriations in Alabama focus on the prevalence of such conditions in African communities and the related social and economic impacts (Bailey et al., 2019).

Kentucky was excluded from the Public Land Survey system that rationalized most land speculation west of the Appalachian mountains in the late 18th century. This surveying system, designed by Thomas Jefferson, created small plots that were more affordable by low income settlers, as well as uniform rules of surveying that made plots more readily fungible on east coast markets. However, settlement south of the Ohio River, in the land that is now Kentucky, was covered by older surveying systems that were notoriously patchy and contradictory in implementation. As a result, the state developed a reputation for chaotic systems of title (Linklater, 2013). For instance, in explaining his family's move from Kentucky, Abraham Lincoln said it was "...partly on account of slavery, but chiefly on account of the difficulty in land titles in Kentucky" (Donald, 1996, 23). This system favored the wealthy with access to lawyers, encouraged squatting and subsistence livelihoods, and entrenched structural tendencies towards political and economic inequality. By the late 19th century, burgeoning extractive industries in coal and timber in eastern Kentucky came into an economy without countervailing formal economies and a very weak land registration system (Eller, 1982). The ensuing land grab triggered patterns of violence that were largely among local elites competing for outside land investors, but were portrayed in sensationalized national media as primitive, premodern blood "feuds." This symbolic portrayal of Appalachia as a backwards region distracted attention from the vast land transfers underway and entrenched national stereotypes about the region that stigmatized "hillbillies" as biologically degenerative (Waller, 1995). Cultural stigmatization and ever deepening regional poverty combined to create a climate in which local residents' voices and claims to land equity have not been empowered (Billings *et al*, 1995). It should also be noted that there is a glaring gap in scholarship on Indigenous land systems in, and displacement from, Central Appalachia (Dunaway, 1995).

As mentioned, the 1970s *Who Owns Appalachia* land study found that 72% of the land and 80% of mineral rights in Central Appalachia were absentee-owned, and that 50% of the land was corporate-owned (Appalachian Task Force, 1983). In Kentucky, about one fifth of the taxable surface land is available to local people for their own use and ownership. The rest is absentee- or corporate owned. Again, these proportions are strikingly similar to those reported by Conner Bailey <https://agriculture.auburn.edu/research/aers/alabama-timberland/>. In Kentucky, despite the low population density, there is a chronic lack of housing (Gaventa and Horton, 1984), and the frequency of heirs' property ownership appears to be high, but data on its extent is limited because of the lack of uniformity in terminology denoting heirs' property parcels across counties and the lack of consistency in reporting such properties at all (Deaton, 2007). During the boom years, coal camps attracted a vibrant racial and ethnic mix, but the population is increasingly White because of the higher out migration of African Americans (Turner & Cabell, 1985; Lewis, 1987). Despite all of these challenges, strong cultural attachment to the land continues in communities with long histories of dependence on livelihoods based on land and natural resources (Halperin, 1990).

Thus, in both the Black Belt and Central Appalachia, the hegemony of powerful interests have concerted to divest, first Native individuals and cultures, and later poor and working class African Americans and whites of lands. Again, however, there are important differences in the geography, economies, culture, and racial composition of these respective regions, which necessarily influence how people in the different places experience such divestiture, the mechanisms each wield to restore land rights, and importantly, the means by which land held as heirs' property is transitioned to a status that makes it more attractive economically.

The UHPA as Response to African American Land Loss

The UHPA represents the culmination of a decades-long effort by many organizations and individuals to reverse the decline of African-owned, rural land. Of course, the law holds this promise for people and places outside of the rural, Black Belt South and is one reason why we are keenly interested in assessing its potential in Kentucky.

Again, while black land losses have been attributed to a number of factors, i.e., voluntary sales, adverse possession, partition sales, and tax sale (Emergency Land Fund, 1980, p.49), partition sales as a culprit have garnered the most attention by those advocating for black land rights. According to the 1980 Emergency Land Fund report, "There is little, if any, dispute that a sale for partition and division is the most widely used legal method facilitating the loss of heir property" (Emergency Land Fund, 1980, p. 273). However, neither at the time of that writing nor subsequently has the proportional influence of these four factors been determined (Casagrande, 1986; Craig-Taylor, 2000; Chandler, 2005; Mitchell, 2019). We are aware of just three studies, one from the popular press and two from the academic literature, examining partition actions involving black-owned land. The first is the Associated Press' (AP) *Torn from the Land*, 3-part series published in December 2001 (Lewan and Barclay, 2001). The larger study on which the AP's articles were based involved an extensive investigation of more than 1,000 people and thousands of court records, which, according to the authors, uncovered various kinds of takings, many of them documented in court records. However, of the many court records reviewed, the AP article mentions just fourteen court-ordered partition sales. The article states that in the 1950s, there were "several" of these sales—but in recent decades it's become

“big business.” But again, it is not clear from the article whether the investigators discovered more.

Because of the lack of empirical evidence supporting the claim that partition sales have been a major cause of black land loss, Mitchell (2005) directed a study of partition sales in Halifax County, NC in the early 2000s. Mitchell (2005) writes that at the time, case law was an insufficient source for the discovery of widespread forced sales of black-owned land because many of the issues and cases affecting black land tenure did not appear in case law. Those kinds of suits never made their way through the system to appear in case law recordings. As a result, legal scholars knew very little about the struggles with black land takings. Mitchell’s study concentrated on the black, Tillery Farms portion of the Roanoke Farms New Deal Settlement area in Halifax County. The team built what they called a “land registry” that tracked 201 properties associated with the Settlement. This was done at the county Registry of Deeds office. Title searches on these properties were conducted to determine how many involved a forced, partition sale for a 60-year period. The analysis uncovered very few partition sales. Recognizing the limited, case study approach used employed by the study, Mitchell (2005, p.609) concluded:

Although there has been significant black land loss over the course of sixty years with respect to the properties that constituted the former Tillery Farms section of the resettlement project, a review of the different types of forced sales transactions in our data set has uncovered comparatively few partition sales. Of all the various types of forced sales recorded in our data set, foreclosures are by far the most prevalent. This suggests—and I must emphasize that it simply suggests given the limited number of properties that are in our dataset that some of those who are working to preserve black-owned land may have overestimated the degree to which partition sales have been a source of black land loss.

An attorney interviewed for this project also suggested that tax sales, as another form of forced sale, was probably more prevalent historically as a contributor to black land loss: “I think a lot of what happened was probably tax sales. But I do think that there was exploitation and theft” (GA9).

A few years after Mitchell’s project, the University of North Carolina’s Center for Civil Rights examined more than 300 partition case files in fifteen North Carolina counties³ over eight years, 2000-2007.⁴ We found no published report or article from that analysis, but internal memos on the July 9-13, 2007 field collection describes county demographics and partition actions. Findings were reported in terms of the number and percent of special proceedings files accounted for by partition actions. The number of partition actions ranges from 360 in Washington County (representing 6% of all special proceedings filed) to .5% (county or counties not specified). Tyrell County reported just 15 actions, but these comprised 19% of special proceedings files. Lastly, Janice Dyer’s (2008) examined partition actions for a single Alabama County (Macon), as well as partition actions appearing in appellate court records for the entire

³ Pearson, Johnston, Sampson, Duplin, Carteret, New Hanover, Halifax, Edgecombe, Nash, Warren, Beaufort, Washington, Tyrell, Bertie, and Moore.

⁴ Diana Santos memo obtained from Janice Dyer, 5 May 2020. Subject: Methodology and Research Process for Partition Sales Research Trip Memo. 20 July 2007.

state of Alabama (Dyer 2008). That effort concluded that there was little evidence of black land loss from partition sales.

To be clear, this non-exhaustive review of the partition action literature should not suggest that partition sales have played a trivial role in black land loss but rather that black land disenfranchisement stems from multiple factors, many of which may be traced to tenuous land ownership. For instance, some proportion of foreclosures and tax sales may, at their root, be attributed to lack of clear title, reflecting co-heirs' unwillingness or ability to invest in property because the future of such properties is uncertain. Still, given the dearth of documented partition actions, we questioned why the legal community chose to prioritize reform for this aspect of heirs' property ownership. An attorney with a non-profit legal group responded that the problem of partition sales was the "lowest hanging fruit," representing a very tangible and recognizable pitfall of heirs' property ownership (GA6).

Methodology

To provide context for our work in all three states, we first estimated the number of heirs' property parcels at the county level using Core Logic and Digital Maps Products data. Next, we assessed the efficacy of the UHPA by examining its application and impact on partition orders in Georgia and Alabama and considered its potential impacts in Kentucky. In terms of its impact in Georgia and Alabama, we employed three methodologies. First, we examined court records and decisions related to partition actions in these states; second, open-ended interviews have been conducted with 15 real property attorneys, one expert on heirs' property in the South, and with two individuals familiar with titling issues involving heirs' property parcels. By the end of June 2021, we will have spoken with 10 attorneys who practice in Georgia, 4 in Alabama, and 2 in Kentucky. We have also interviewed a land rights advocate and 2 land titling experts. The land rights advocate has worked across the region, and the two titling professionals work in Alabama and Georgia, respectively. Third, we distributed a seven-item survey (in appendix) to members of the Georgia Bar, related to their knowledge and experience with the state's UHPA statute. We expected to distribute a similar survey to the Alabama Bar but were not able to secure support from that organization. In Kentucky, we will conduct court records analysis and attorney interviews to mirror the work we have done in Alabama and Georgia. We will also document some of the record keeping protocols associated with heirs' property in Kentucky and pay close attention to relationships between mineral rights and heirs' property in our analyses.

Heirs' Property Estimation: Alabama, Georgia, and Kentucky

We estimated the proportion of heirs' property parcels at the county level for Alabama, Georgia, and Kentucky. This analysis provides some sense of how many heirs' parcels exist in individual counties in these states and was used to help refine our selection of counties to examine in-depth, particularly in Kentucky as less was known about heirs' property extent in this state. The estimations were done using a combination of parcel records from Digital Maps Products (DMP) and CoreLogic (CL). The two datasets were joined using the Assessor's Parcel Number (APN), common to both datasets. These data were purchased by the USDA Forest Service's Forest Inventory and Analysis function and were available for analysis by Cassandra Johnson Gaither, as use of these data is restricted to Forest Service employees. Data from both companies is sourced

from individual counties and aggregated to the county scale by the respective companies. Estimates contained in this preliminary report are for tax year 2016. The most recent tax year data (March 31, 2021) will be presented in the final report. The complete data for that year is not yet accessible. Footnotes in Table 1 describe a number of data limitations for these datasets, the majority of which have to do with missing data for heirs' parcel indicators in the data and missing land and acreage values. In some cases, these omissions are significant.

We adopted a conservative approach in our identification of heirs' property parcels, as our intent was to identify only parcels with a high likelihood of being heirs' parcels, rather than select "potential heirs' parcels--using the method introduced by Pippin et al (2017).⁵

Alabama and Kentucky court cases

Partition actions in Alabama and Kentucky are under the purview of the circuit and probate courts. The state has a statewide database that may be analogous to Georgia's GSCCCA (alacourt.org) although we could not determine, without cost, whether it was searchable by keyword, which is essential to our task. To identify partition actions in Alabama and Kentucky, we used a commercial database, WestLaw. This database contains decisions from appeals courts rather than lower level state courts, which limits our search in Alabama and Kentucky to court decisions that have been appealed. An advantage of this database, however, is its statewide applicability and ease of search. We searched using the keyword "partition," to limit our search to only the kinds of cases addressed by the UHPA. From the initial search, cases were read and analyzed to roughly determine if they were clearly unrelated to heirs' property or if they may be relevant.

We examined cases in Alabama from roughly January 1, 1950 to December 31, 2020. They were divided into two groups: those occurring before Alabama adopted the UHPA--AL Code § 35-6A-1 (2014) (before January 1, 2015) and those after this date. For the pre-UHPA analysis, relevant cases were read and analyzed to determine: 1) general factors/parties involved and reasons for the partition suit; and 2) lower court judgement, in terms of equitable or statutory partition. The latter allows us to assess how consistent Alabama courts have been with respect to overall trends in partition action decisions pre-UHPA. For cases beginning January 1, 2015, we determined which of the key UHPA stipulations were applied to cases. Of relevance are the three major provisions designed to limit exploitative partition sales. Again, these are: 1) the buyout option; 2) court consideration of co-tenants' sentimental, cultural, or otherwise intangible land associations 3) fair market value sale of property if buyout option not exercised by co-heirs. These three factors represent the heart and substance of the UHPA and its ability to effect, that is to bring about systemic changes in the partitioning process. We examined Kentucky cases as

⁵ A subsequent evaluation of the Pippin et al. estimation method suggested that the percent of "false positives," i.e., incorrectly identified parcels captured by that method ranged from 33 percent to 52 percent (Johnson Gaither & Zarnoch, 2017). Given this uncertainty, we identified heirs' parcels as those with notation beside the owner name, e.g., "heirs of," "hrs," "estate," "interest," "deceased," "famof," "etal," "careof," "conserv," "execu," "fraction," and "trustee." We excluded business and religious interests, public property, and specific types of trusts (e.g., living, revocable) and estates (business related).

one group (January 1, 1950 through December 31, 2020) since the UHPA has not yet been passed in Kentucky.

Georgia court cases

We counted the number of partition actions in seven Georgia counties - Chatham, Dougherty, Washington, Twiggs, Greene, Taliaferro, and Wilkinson - from 1990 through 2020. To access these actions, we purchased a subscription to the Georgia Superior Court Clerk's Cooperative Authority (GSCCCA) database. We searched this database's Real Estate Index using the Premium Instrument Type Search, which allows the user to search by county and "instrument type." Records can be searched from January 1, 1990 to December 31, 2020. Instrument types include documents such as affidavits, deeds, court orders, easements, liens, etc. Through consultations with a Georgia attorney and a professional abstractor, we determined that any partition actions filed in our counties of interest could be found in the "court order" instrument type. For all counties of interest, we searched court orders from January 1, 1990 through December 31, 2020 and saved records that indicated partition actions. We also saved a small number of quiet title actions, title consolidations, and other heirs' property cases that were common or noteworthy to provide documentation of other types of transactions relevant to the background of this project. However, these other records or actions were not searched systematically or exhaustively. The records we saved were analyzed to determine 1) how many partition actions have taken place in our counties, 2) what types of actors have been involved in partition actions, 3) outcomes of partition cases, and 4) other common or noteworthy scenarios involving heirs' property. For all of these objectives, with emphasis on the first three, we will quantify and characterize partition actions that occurred before passage of the UHPA in Georgia (January 1, 1990 to December 31, 2012) and after passage of the UHPA (January 1, 2013 to December 31, 2020).

Attorney interviews and surveys

We used personal and professional networks to reach out to real property attorneys in Georgia, Alabama, and Kentucky to request interviews. Prior to each interview, interviewees were sent a consent letter, an informational handout on the project, and the list of questions that would be asked. The attorney interviews were semi-structured and included questions pertaining to five different themes relevant to the attorney's experience with heirs' property issues: attorney's professional background; social and economic characteristics of the location where the attorney practices and includes questions on major job sectors, poverty, and natural resources present in that area; types of families that seek legal help with heirs' property issues, as well as the families' personal connections to their heirs' property; technical questions related to title clearance, partition actions, and the UHPA; and financial impacts of heirs' property in the area where the interviewee practices.

In Georgia, we distributed a seven-item survey (in appendix) to members of the Georgia Bar, related to their knowledge and experience with the state's UHPA statute. We hoped to conduct a similar survey in Alabama but were not able to find a contact to help us distribute it. Time constraints prevented us from conducting a comparable survey in Kentucky, to better understand the frequency of partition actions in different judicial circuits and the familiarity of courts with these types of cases, but we hope to include this in future work.

One component of the Kentucky analysis that differs from what we have done in Alabama and Georgia is a deeper focus on the production and maintenance of land records that often are used to estimate the presence of heirs' property. We conducted phone surveys with Property Valuation Administrators in Bell, Breathitt, Clay, Cumberland, Harlan, Knott, Knox, Leslie, Letcher, Magoffin, McCreary, Martin, Owsley, Perry, and Wolfe counties. In these calls, we asked 1) what notations their office uses to indicate heirs' parcels, 2) whether they believe their records over-, under-, or accurately estimate heirs' parcels, and if they seemed willing to provide information, 3) whether they are able to share their records with us, and 4) whether they would participate in a more in-depth interview.

Findings and Discussion

Heirs' Property Estimation: Alabama, Georgia, and Kentucky

Table 1 shows total number of parcels for each state, identified heirs' parcels, heirs' parcel acres, percent of total parcels as heirs' property, total assessed value of land, assessed value of land only, and assessed value of improvements only (typically some type of built structure). We identified 62,806 heirs' property parcels for Alabama, Georgia, and Kentucky. These contained roughly 889,000 acres, with an assessed total land value of \$1.3 billion, roughly \$329 million in land value only, and \$388 million in improvement value. Footnote 2 in Table 1 provides details about the land value and acreage data. Again, the very large percentages of missing data indicate that these data represent conservative estimates of land values and acreage and are suggestive of limitations of secondary data aggregated across counties and states. The data in Table 1 have also been calculated for each county in each state and are available upon request.

These caveats notwithstanding, the heirs' property proportions (number of heirs properties divided by total county properties--less those described in footnote 1, Table 2) mapped at the county level in Figures 1-3 show interesting correlations with existing patterns of vulnerability in each state. Again, because of our stringent definition of heirs property, the proportions are considerably lower than those reported by Pippin et al. (2017). In Alabama, the highest proportion of properties in any county, accounted for by heirs parcels is roughly 5%, with the highest range being 2 to 5%. Alabama counties in this range cluster in the extreme southern part of the state (Monroe, Conecuh, and Covington) and along the Mississippi border (Choctaw, Sumter, Lamar, and Fayette). Choctaw and Sumter are part of the state's "Black Belt Crescent." These observations are consistent with Bailey et al.'s (2019) charge that timberland monopolies in the state and the low tax rates assessed on these properties suppress public revenues, which in turn, perpetuate poverty rates.

Other south Alabama counties with higher than state average African American populations--Monroe, Conecuh, and Covington--also have relatively high proportions of heirs' parcels. And, while not in the highest category of proportion of heirs', the neighboring Black Belt counties of Hale, Marengo, Perry, Dallas, Wilcox, Lowndes, and Butler also have relatively higher proportions. The absolute number or proportions of heirs parcels in these counties is less significant than the spatial distribution of the proportions. We suspect that some of the poorer

counties in Alabama and the other states may have higher heirs' parcels counts but lack the capacity to tract and account for them.

Georgia's heirs' property proportions are also more prevalent in some of the state's middle and south Georgia Black Belt Counties, which like Alabama's Black Belt, have economies and cultures tied to agrarianism or extractive industries and are coterminous with higher poverty levels (figure 2). In central Georgia, these counties include Washington, Wilkinson, Twiggs, and in south Georgia--Randolph, Dooly, and Calhoun, all of which (except Wilkinson and Twiggs) have African American population percentages of at least 50%. With respect to extractive economies, Seabrook and Louza's (1995) exposé, *Red Clay, Pink Cadillacs and White Gold: The Kaolin Chalk Wars*, describes the history of kaolin excavation in central Georgia's "kaolin belt," itself a sub-region of the state's Black Belt. The decades' long extortion and appropriation of mineral-rich land from mostly poor/working class African American families is recounted with chilling details about how tenuous titles to land provided an avenue for corporate buyout of fractional ownership interests and the subsequent court sales of properties to kaolin companies. Washington, Wilkinson, Twiggs Counties figure prominently in these descriptions.

Table 1. Heirs' Property Identification in Alabama, Georgia, and Kentucky.								
	Number of counties	Total number of parcels[1]	Number of heirs' parcels	Total acres	Percent heirs' parcels	Assessed total land value[2]	Assessed land value only	Assessed improvement value only
Alabama	67	3,007,392	18,761	124,410.68	0.006	129,645,241	4,647,730	3,842,171
Georgia	159	4,617,246	23,132	273,328.80	0.005	346,553,941	202,493,116	144,060,800
Kentucky	120	2,255,409	20,913	491,200.09	0.009	880,889,117	122,234,017 ⁺	240,256,120
Total	346	9,880,047	62,806	888,939.57		1,357,088,299	329,374,863	388,159,091

[1] Property uses in the following categories were excluded from the total count of county parcels, along with the property indicator code on the left (CoreLogic data). These parcels were excluded because the heirs' property percent should be calculated net of commercial, industrial, or public lands: 20 commercial, 25 retail, 26 service, 27 office building, 28 warehouse, 31 parking, 32 amusement/recreation, 50 industrial, 90 exempt (religious, state/fed). However, a large number of parcels in each state had no property indicator code, but the corresponding owner name suggested that some of these parcels were used for the uses indicated above.

[2] 63% of the values for *assessed total land value* were missing for parcels in Alabama; 60.9% in Georgia; and 21% in Kentucky. 92.4% of parcels had missing data for *land value alone* in Alabama; 60.9% of these values were missing in Georgia; and 72% in Kentucky. 96.6% of *improvement value* data was missing for parcels in Alabama, 75% in Georgia, and 84% in Kentucky. 63.2% of the value for land acres was missing in Alabama; 60.8% in Georgia; and 23.8% in Kentucky. Total assessed land value does not equal the sum of land value only and improvement value only because of missing data for land only and improvement only. Missing data also likely account for the large differences in land values across the states.

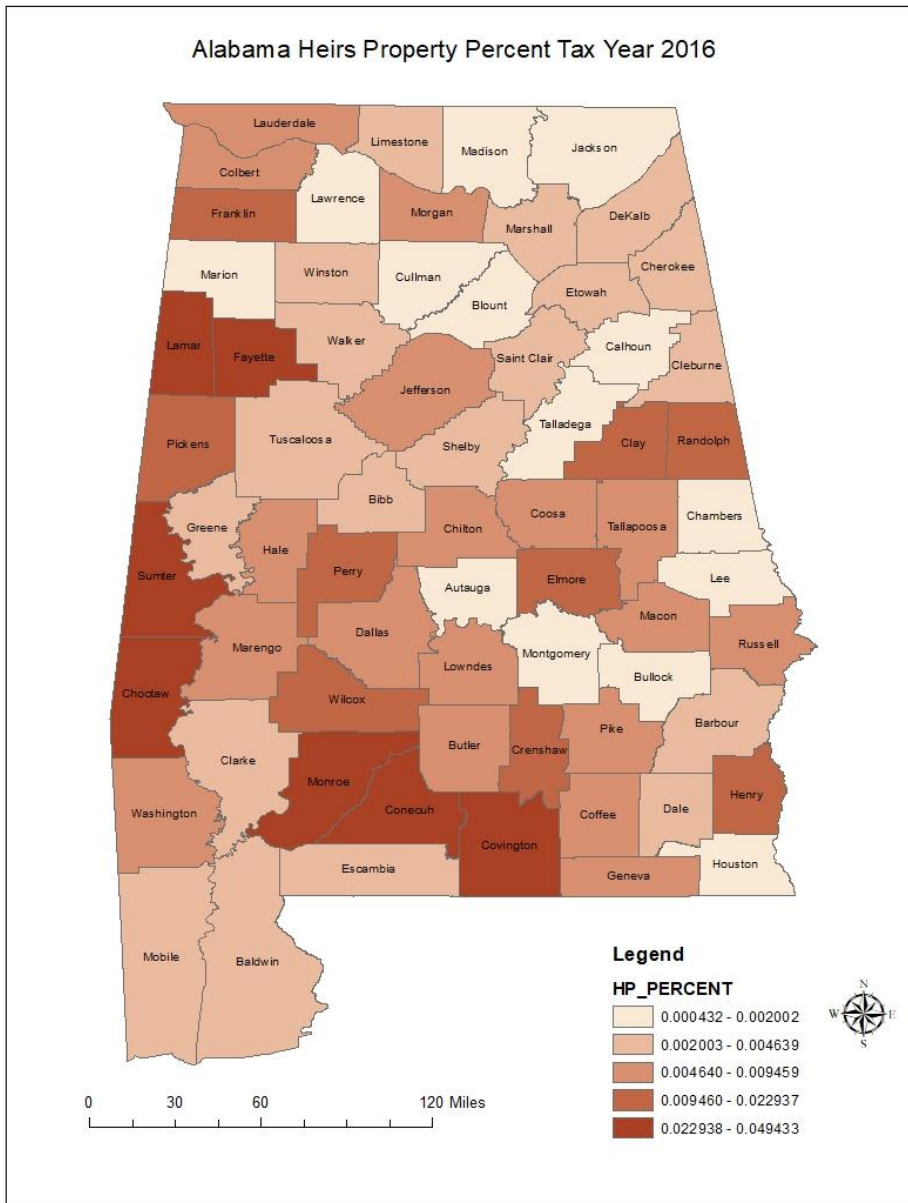


Figure 1: Heirs' property proportions in Alabama counties.

Georgia Heirs Property Percent Tax Year 2016

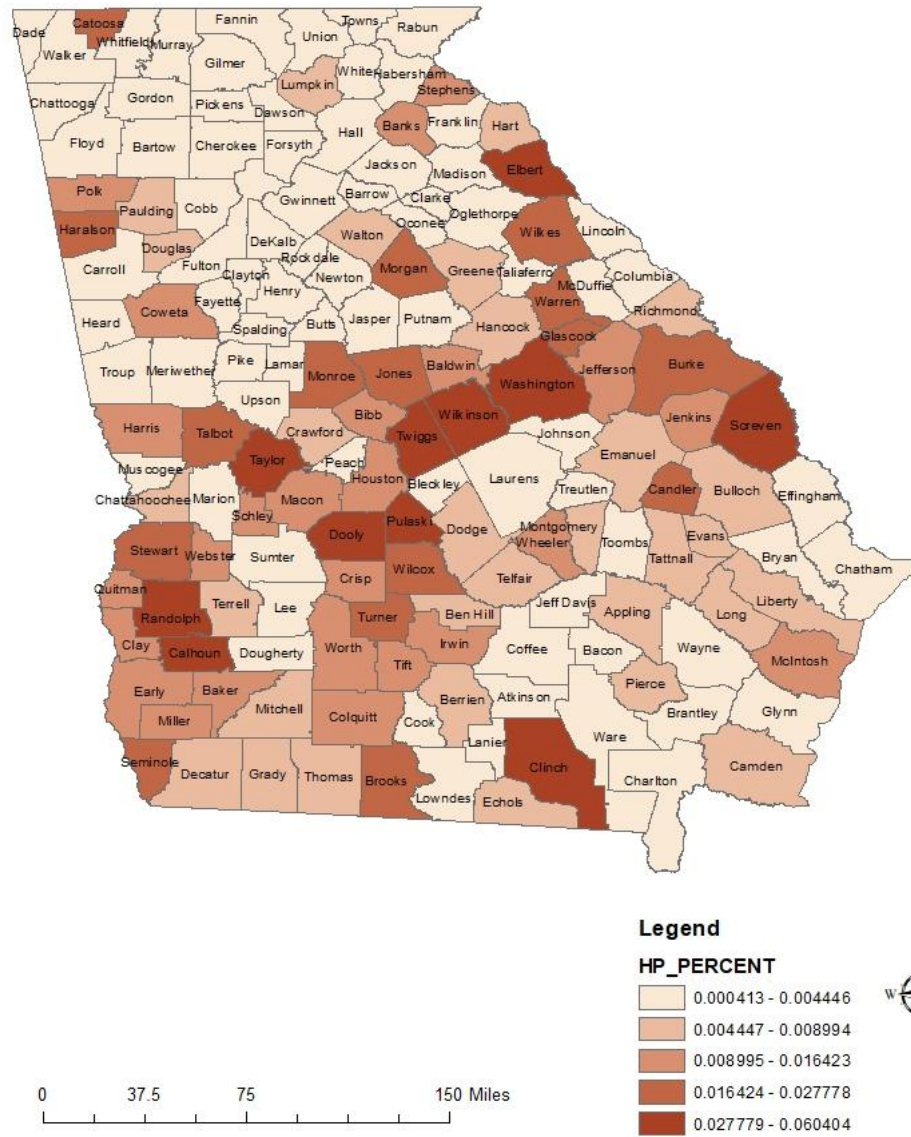


Figure 2: Heirs' property proportions in Georgia counties

The concentration of higher heirs' parcels in Kentucky (figure 3), again, is consistent with the locations of some of the state's most intense coal mining. Nine of the top 10 counties in estimated frequency of heirs' property all have a history of coal mining (see Table 2). In western Kentucky, the heirs' property distribution clusters in the coal counties of Union and Webster. In eastern Kentucky, four of the high heirs' property counties are also in the top 10 counties for coal production (Leslie, Martin, Perry, and Knott), and all the others are historic coal mining counties.

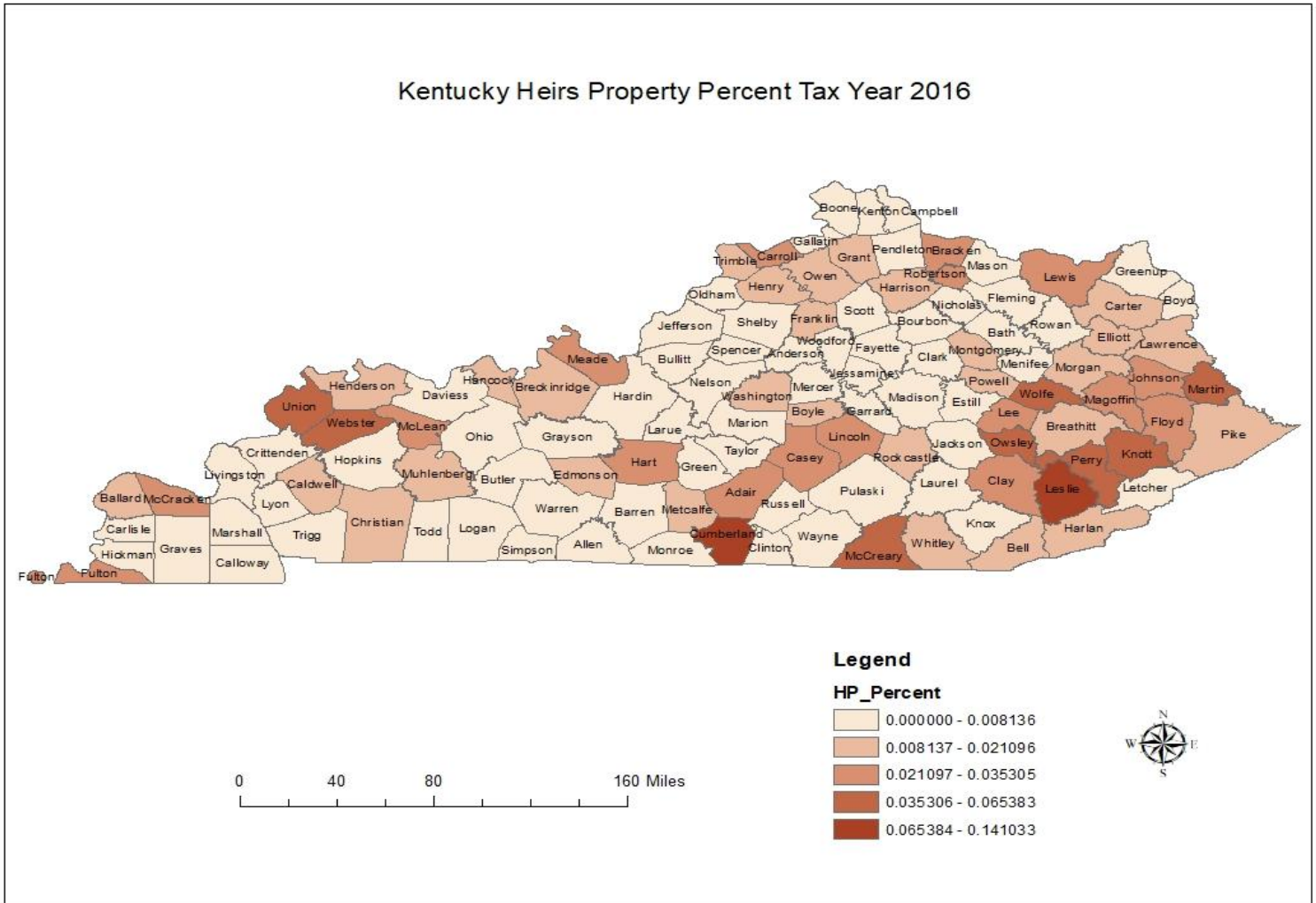


Figure 3: Heirs' property proportions in Kentucky counties

Table 2: Heirs' Parcels and Coal Production in Selected Kentucky Counties

County	Total Parcels	Heirs' Parcels	Proportion Heirs' Property	Coal Production in Short Tons, 1983-2013 ^[1]	Heirs' Property Rank	Coal Rank
Leslie	10143	1434	0.14	119622.63	1	9
Cumberland	5646	529	0.09	No Data	2	43
McCreary	9846	628	0.06	4933.20	3	31
Owsley	3555	198	0.06	6858.31	4	28
Martin	7634	374	0.05	197034.45	5	6
Union (Not Appalachian)	8580	414	0.05	23294.37	6	22
Webster (Not Appalachian)	11522	548	0.05	29045.78	7	18
Wolfe	4609	191	0.04	4628.13	8	33
Perry	18334	754	0.04	214638.64	9	4
Knott	11929	452	0.04	231699.36	10	3

[1] Coal production data was sourced from the U.S. Energy Information Administration (<https://www.eia.gov/coal/data.php#production>).

Three historic patterns could have created these patterns of unclear title associated with extraction. First, from the 1880s to the 1920s, there was a dramatic increase in land values as railroads opened the massive reserves of high quality timber and coal to global markets. Eastern Kentucky families to this day, carry stories about how they lost family land to well-financed lawyers and “land men” from east coast and international land speculating concerns (Eller, 1982). Very similar to appropriations that occurred in the Black Belt, land grabs in Appalachia were facilitated by weak or nonexistent property titles (Eller, 1982). Further, by the turn of the 20th century, the land registration system in Kentucky had been troubled for over a century and favored those who could afford lawyers. This was a contradictory land system. On one hand, land inequality was closely tied to political inequality. By 1927, almost 65,000 coal miners and their families occupied company-owned housing in small coal camps across eastern Kentucky (Kentucky Energy and Environment Cabinet, 2017). The ability to evict families was a key factor in political control (Eller, 1982). On the other hand, during this era of high but volatile employment, there was a parallel and informal land ethic. To survive on inadequate and unstable wages, many families engaged in subsistence gardening and commoning (Hufford, 1997; Salstrom, 1994) and a complex and often contradictory mix of kinship and neighborly support

systems (Scott, 1995). Paradoxically, corporate and absentee-owned land, in some areas, became a kind of commons across which people deployed intergenerational skills of foraging, fishing, hunting, and gardening to supplement precarious wage labor. Converging in coal camps was a rich mix of ethnic traditions of subsistence provisioning (African American, Southern / Eastern / Northern European). This laid down a land philosophy, that some have called ‘double occupancy’ (Stewart, 1996) because it had two contradictory layers: a) a rigid feudal-like land hierarchy enforced by local elites who maintained power as gatekeepers to outside interests and land owners; and b) communities with subsistence livelihoods that engendered deep emotional connections to a wider commons of land access and use without formal territorial boundaries or private property claims (Hufford, 2019). This land philosophy was marked by distrust of lawyers in general, because of the enduring memories of land grabs and outside colonizing forces. This distinctive “double occupancy” land regime characterized counties where the coal industry developed through the 1940s during the era of highest employment. It created cultural conditions in which families might be disinclined or unable to seek legal help to write wills or clear titles.

The second condition that contributed to unclear titles in Kentucky relates to land use patterns, which are different in counties where the coal industry arrived after the 1960s--and employed intensive mechanization to avoid labor costs and unrest. Beginning in the 1980s, there was a rapid shift from deep mining to strip mining which used dramatically fewer workers and caused ever widening damage to surface lands. In counties with extensive strip mining (and its attendant displacements and pollution), and without the close-knit population clusters of coal camps, land-based practices of sustenance, and their emotional and cultural meanings can become attenuated. These counties (like Martin and Leslie counties) seem to have a high frequency of heirs’ property, but we are not sure why.

Third, as the coal industry has declined there are various efforts to diversify the economy. This is creating a different sort of land regime. Anecdotally, it appears that problems of heirs’ property are taking on a new significance during this phase. Many transition projects focus on amenity-based microdevelopment, for sectors such as nature or cultural tourism. However, we are hearing reports of development projects being delayed or stopped because it has been difficult to identify heirs or clear title to buildings or land that is desired for nature trails or downtown revitalization projects, for instance. There might also be a new sort of land grab on the horizon that could transfer land away from local residents’ ownership or oversight. In surrounding states, there are very well-funded nature conservancies buying up large tracts of land for ‘conservation’ and ‘climate resilience.’ And, just recently, it seems that some historic coal-related land companies are severing timber from land rights to sell carbon-offset credits to green energy ventures (such as the carbon-offset program initiated in California). If this takes off, it could become a ‘green development’ that impacts low-income and vulnerable communities in a negative way, as a sort of ‘rural gentrification’ that displaces and out-prices low and moderate-wealth people from historic homelands. In such a scenario, a high incidence of heirs’ property ownership could affect families’ ability to protect their interests in 21st century land regimes.

Kentucky Property Valuation Administrator Phone Survey

To gain a preliminary understanding of how heirs' parcels are (and are not) reflected in county tax records, we conducted phone surveys with 15 Property Valuation Administrators (PVAs) and employees who work in Kentucky PVA offices. We contacted PVA offices in Bell, Breathitt, Clay, Cumberland, Harlan, Knott, Knox, Leslie, Letcher, Magoffin, McCreary, Martin, Owsley, Perry, and Wolfe counties. We asked 1) what notations their office uses to indicate heirs' parcels, 2) whether they believe their records over-, under-, or accurately estimate heirs' parcels in their county, 3) whether they are able to share their records with us, and, if they seemed willing to provide information, 4) whether they would participate in a more in-depth interview. Because these phone surveys were brief and informal, and because some respondents weren't able to provide answers, every question was not always answered by every respondent.

Common notations respondents use to indicate that a parcel is in heirship are "heirs," "estate," and "etal." One county sometimes uses "in care of," and another county sometimes uses "et al and all others." Respondents in eight counties explicitly said that at least some heirs' parcels are still under the deceased owner's name, with no added notation to indicate heirship. Some respondents said that their office uses the same owner name that's on the deed, while others indicated that they deviate from what is on the deed when heirs' parcels are involved. Several respondents explained that they would only change an owner name on an heirs' parcel if 1) a family member requests a name change and provides adequate documentation that they are an heir or 2) if a deed comes through their office with a different owner name than is listed in the tax records.

Most respondents whose offices use multiple notations for heirs' parcels did not have established protocols on which notation to use when. At least three of the PVA offices we contacted conduct regular obituary checks, primarily to see if exemption statuses need to be updated, but this practice sometimes prompts updating the heirship status of a parcel. Two respondents believed their records could provide a close approximation of the amount of heirs' property in their counties while eight counties either believed their records underrepresented the actual amount of heirs' property, or we inferred from other information provided that this would be the case.

When asked whether they were able to share the county tax records with me, several respondents were unsure of how that process would work. A few said it's uncommon for anyone to ask for more than just a few records at a time. Of the two counties that were able to provide us with the exact cost of purchasing records, these prices were \$2,194 and \$3,085, respectively.

Georgia Court records

Our review of partition actions in seven Georgia counties (Chatham, Dougherty, Washington, Twiggs, Greene, Taliaferro, Wilkinson) identified approximately 20 partition actions over the thirty year period January 1, 1990 to December 31, 2020. It should be noted that we found a few hundred court orders declaring that the report of a Special Master (a licensed attorney appointed directly by the court to carry out some action, often investigative in nature) had been accepted, but the report of the Special Master was not included or linked in the database. The majority of these court orders was in Chatham County. It is likely that some

of these reports involved partition actions, but our methodology and timeline for this project did not allow us to further examine these cases.

We also identified several quiet title actions, title consolidations, and other heirs' property cases that were common or noteworthy, which provide relevant context for the project. However, these other records or actions were not searched systematically or exhaustively. The low number of partition actions found in Georgia is consistent with Mitchell's (2005) study of Halifax County, NC and Dyer's (2008) look at this issue in Alabama, although again, our Georgia search was limited to selected counties and should not be generalized to the entire state.

Using the 20 cases obtained from the GSCCCA, we were able to find that there were on average 0.78 partition cases brought per year among the selected counties before the UHPA was passed in 2012. We found two partition cases that occurred after the UHPA (2013-2020) was passed in Georgia, making the rate drop to 0.25 partition cases per year. Inversely, before the UHPA (2012), 55% of the total partition cases we found resulted in a sale, while 100% of the cases (2) that we found from after Georgia passed the UHPA resulted in a sale. With such limited sample sizes it is difficult to tell how meaningful these numbers are; though the drop in partition action rate in this preliminary research is a promising start.

Alabama court records

Again, the intent of the UHPA is to counteract abusive land sales. One way to assess this is to examine the partition sales rate (partition sales/total partition actions) in the period before and after the UHPA was adopted in the respective states. Our search for partition actions in Westlaw yielded 106 cases on appeal in Alabama from 1950 to 2020. Only three cases were from after the UHPA's passage in Alabama (2014). Further, none of the post-UPHPA opinions reference the UHPA, nor do the courts rely on any provision of it to make these decisions. However, we can make some preliminary observations. In Alabama, from 2015 to 2020 there were on average 0.5 partition cases brought on appeal, down from a rate of 1.58 partition appeals per year from 1950 to 2014. However, it should be noted that from 2000-2014 (the fifteen years preceding the UHPA's passage in Alabama) the rate of partition appeals was already down to 1.0 partition appeals annually, which suggests the UHPA may not be the sole cause of the reduction in partition appeals.

Thirty-three percent (33%) of post-UPHPA partition appeals ended in a judicial sale (one out of three cases), compared to roughly 52% of pre-UPHPA partition appeals (~54/103). While the dataset for post-UPHPA cases is fairly small (three cases), these data may suggest that the UHPA has contributed to fewer judicial sales of jointly owned land in Alabama, or at least may have resulted in more partition suits to be more firmly settled at the trial level, removing the likelihood trial judgments are appealed. More research should be done to ensure these results are truly beneficial to the communities the UHPA aims to help.

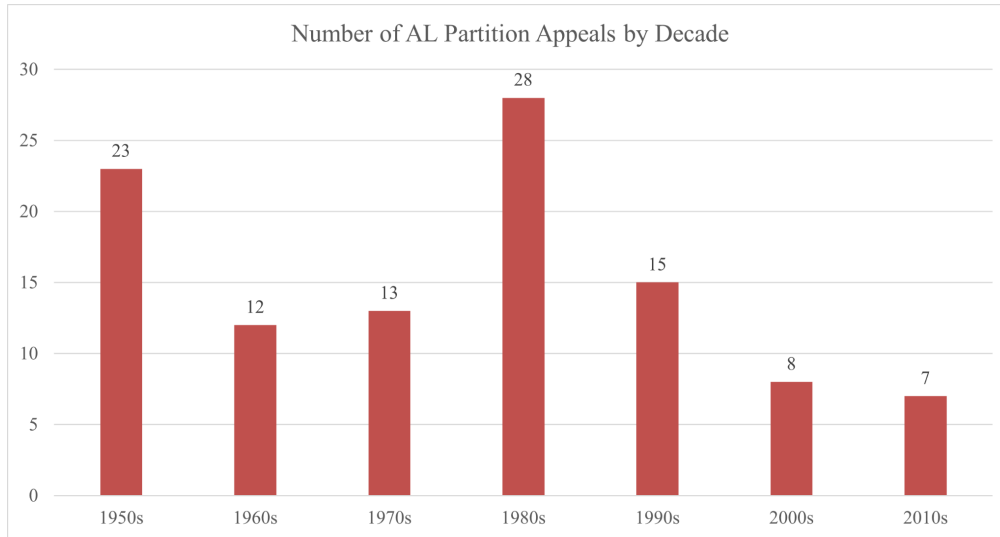


Figure 4: Number of Alabama partition appeals by decade

While the buyout option is considered a major component of the UHPA, it is important to note that Alabama has had a buyout option since 1979 (AL Code § 35-6-100). According to Mitchell (2014, p.13-14), before the UHPA was adopted by any state, 14 states, including Alabama and Georgia had existing buyout options for co-tenants, but “[t]he scope of the buyout remedy, including which cotenants may be given the opportunity to utilize this remedy, can differ substantially among the jurisdictions that recognize this remedy.” The pre-existing Alabama option allowed both petitioning and non-petitioning parties the chance to buy the interests of those bringing a sale, which differs from the UHPA buy out provision, where again, this option accrues only to defendants in these cases, i.e., those not initiating a partition sale. The 1979 buyout option for both plaintiffs and defendants may be one reason why there was an increase in the number of partition appeals after the law was enacted. It is unclear from the text of the opinions if this is directly related; although 33% of the post-1979 opinions reference the buyout statute. More research should be conducted to uncover 1) whether the “boom” in partition actions in Alabama in the 1980s is directly correlated with the passage of AL Code § 35-6-100 (1975) and 2) how the UHPA meaningfully differs from and improves upon this legislation and other pre-UPHPA buyout options so that the UHPA is designed to discourage partition sales.

Kentucky court records

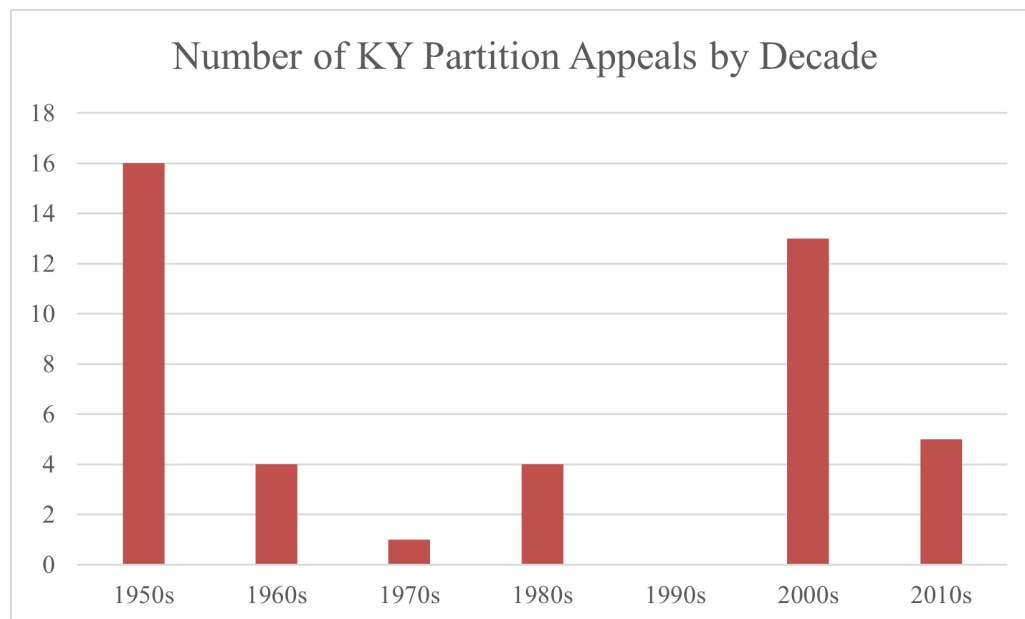


Figure 5: Number of Kentucky partition appeals by decade

Kentucky had 42 partition cases in WestLaw, significantly fewer than Alabama. This may be due to the phenomenon we have heard from interviewees in Kentucky where extractive industries (coal, oil, gas, etc.) tend to lease rather than partition land to gain access to subsurface minerals. Alongside this, Kentucky may have fewer partition actions on appeal because attorneys there are purportedly reluctant to oppose large extractive companies. Additionally, we noted that Kentucky appellate opinions were more likely to be unpublished (meaning they are official court rulings but do not have precedential effect on future court proceedings) compared to Alabama opinions. Without further research it is difficult to say if this phenomenon has any effect on heir property partitions in Kentucky, but could possibly hinder the State's lower courts' ability to be consistent in applying partition law. This would be consistent with another observation of ours: that Kentucky courts have different understandings regarding presumptions made in partition suits. In Alabama, Georgia, and some of Kentucky, land is presumed to be divisible and it is generally the burden of the one bringing the request for sale to prove it cannot be equitably divided (and thus should be sold). However, in some Kentucky courts, the presumption is backwards, such that indivisibility is presumed and it is up to the one who seeks to prevent the sale or to partition in kind to show that the land can be equitably divided.

In both Kentucky and Alabama, the majority of included partition actions were initially brought by a member or members of the family that primarily owned the land (74% of Alabama cases and 83% of Kentucky cases). However, in Kentucky, 10% of partition cases on appeal were brought by companies or corporations (often mining operations) - compared to only 4% of Alabama cases being brought by companies. Considering that the purpose of the UHPA (and

Alabama's 1975 buyout option) is to prevent third parties from taking land from families, it seems clear that the UHPA is not enough on its own to fix the issue of land loss through heirs' property, since it can still happen without a large corporation being involved. Though, the UHPA may also be acting as a deterrent, in that we may be seeing more partition actions brought by companies in Alabama today were it not for the UHPA. If so, this highlights the importance of legislation like the UHPA in places like Kentucky.

In both states, most complainants were requesting partition sales rather than partition in kind (76% in Alabama and 68% in KY). However, in Kentucky, a much higher percentage of complainants (24% in Kentucky but 6% in Alabama) than in Alabama requested only partition in kind than in Alabama.

When parcel size was listed in Kentucky opinions, which was rare, the parcels were often under 100 acres, while most Alabama parcels were in the hundreds of acres in size. Court data does not, and would not be expected to, illuminate why this is the case; though this factor may be interesting and important for future heir property research. Combining the parcel size difference and disparity between preferences for sale or partition in kind, the data may suggest that people in Alabama are shifting away from very large, primarily agricultural or timber land and have less interest than those in Kentucky in staying tied to family land. This could imply that the UHPA might be more utilized and welcome in Kentucky since more people seem to be interested in maintaining familial land ownership. While not the focus of this study, further research on the locations of heirs' property in different regions of Kentucky with differing economies and histories of land loss would likely be fruitful.

Since we are using appellate data gathered from WestLaw, there are certain important limitations to our findings. First, by only looking at cases on appeal, we inherently shine more light on people and families who are 1) in more contentious situations, which may make the problem of land loss appear worse than it is, and 2) financially able to acquire counsel and with enough time to litigate - and indeed prolong - a dispute. Thus it is likely with this analysis we missed a great deal of heirs' property owners who were not able or willing to take their cases to the appeals stage, which is generally the lower-income and underprivileged group of people we are interested in and which the UHPA attempts to assist. Additionally, appellate cases often have less detail in them surrounding the parcel of land itself, often omitting even basic information such as acreage. Finally, it is a long standing judicial practice that appellate courts give deference to trial courts' decisions, assuming the judge acted reasonably and decided fairly unless the evidence is clearly to the contrary. This makes using exclusively appellate data difficult since the appellate court will usually not go into the minute details of the trial court's decision to order partition, sale, etc. except to say that the trial court's decision was not "clearly erroneous" or an "abuse of discretion."

Attorney interviews

We spoke with attorneys affiliated with both for-profit and non-profit organizations in both Alabama and Georgia. Attorneys interviewed in Georgia worked mostly with clients who either lived in rural areas of the state or owned land in these areas. In some cases clients lived

in and around metro Atlanta, but their properties were typically in rural areas of the state's Piedmont or Coastal Plain. Alabama attorneys were located in rural counties in the middle of the state and mostly served clients from these areas. Two Georgia attorneys mentioned that women are more likely to seek resolution for title issues. A metro Atlanta attorney also remarked on the relatively high number of retired, middle-income, educated black women seeking services with the attorney's firm, and another south Georgia attorney also mentioned that more clients seeking these services were women, although not necessarily well-off. Typically, these families own smaller parcels ranging from 10 to several hundred acres. In both Alabama and Georgia, virtually all clients with heirs' property cases were African American although attorneys representing not-for-profit organizations said that a small number of their clients were white. Most of the attorneys we spoke with had been addressing heirs' property cases for several decades. Half of the attorneys had filed at least one partition action, but the number of such actions typically ranged from one to three. Just two attorneys had filed multiple partition actions.

In Kentucky, we interviewed five attorneys with expertise in Appalachia. Three are practicing attorneys with non-profit organizations. One is in private practice but has done extensive pro bono work for non-profits. One is a law professor not based in Kentucky but is an expert on rural development and Appalachia. A majority of the work done by the four Kentucky attorneys we interviewed has involved environmental law in Appalachia, especially related to coal, oil, and gas extraction. A couple of these attorneys mentioned the historical exploitation of heirs' property owners by coal company "land men," trying to obtain land to mine, but in total, the Kentucky interviewees had encountered three partition actions in their careers, which range from 15 to 40 years. Each of these partition action cases described by the attorneys, however, had been brought by coal companies against heirs' property-owning families.

Attorney opinions on UHPA efficacy

Attorneys had varying levels of familiarity with the UHPA, ranging from those who were aware of it but had not litigated a case involving the law to those who had either used it in a case or had strong opinions about its impact on partition law. Nearly all attorneys stressed that the UHPA has been a necessary first step in redressing immediate problems encountered by heirs' property owners contending with partition suits from land predatory speculators / developers. That the law defined heirs' property was thought to be a great advance in property law and efforts to advocate for limited resource land owners. According to one respondent: "I think that the legislative definition within the UHPA gave an actual starting point for ensuring that future farm bills will have a place for heir property owners.... So now we have some language that we can use in our advocacy efforts to address some of the other issues beyond partition sales...." (GA6)--and this definition has the added benefit of defining both the rights and responsibilities of the tenants involved (GA6).

In terms of the law's fundamental aim (i.e., discouraging predatory partition actions), an Alabama attorney who had represented clients who had brought such suits, believed strongly that the law had been extremely effective. The attorney handled 15 to 20 such cases in a typical ten-year period before the act was adopted, but this part of the firm's business had declined notably since the law went into effect in Alabama:

Let me let me go back 15, 20 years ago, I would have a lot of people come in, and say, you know, I just bought out one or two heirs of this 100 acre parcel--I'm gonna force it to be sold and buy everybody out. And a lot of people were doing that. There was a lot of interest in that. But with this new Act, it looks to me that that has really slowed down, because it's really hard to maybe to buy or force a family to sell, if only one or two of 'em want to do that.... Because under this new Act, it's so hard to get it to the point where the judge says it's gotta be sold on the courthouse steps....These speculators, real estate agents, other people who are looking to make a quick buck--I'm not seeing them going and trying to find a brother or sister who lives in another state and say, hey, I want to buy you're interested in your farm anymore. So I really think it's done well in addressing family farms type stuff from being sold as much as they used to be (Interview AL2).

The same attorney also described what he believed to be a successful outcome of the UPHPA's application to a partition action handled by the attorney's firm. In this instance, there were 35 heirs, and 25 of them wanted the roughly 100 acres of land to be sold.⁶ The property was advertised in a local paper and sold at a courthouse sale, but several people bid on the property which raised its price to approximate market value. The property sold for \$1,500 per acre, yielding approximately \$150,000. Divided among 35 family members, each would receive \$4,285.71 before court and attorney costs, which suggests that the individual takeaway was not substantial. Another Alabama attorney felt strongly that one of the shortcomings of the UPHPA was the fact that the law allows attorney fees for both the plaintiff and defendants to be subtracted from proceeds of land sales before these are distributed to the litigants. The attorney remarked that in instances where the court ruled in favor of the plaintiff, this stipulation was especially insulting to the defendants because they essentially had to pay costs for someone who was instrumental in divesting them of their property and heritage (AL3).

One of the strongest critiques of the legislation is that it does not alter tenancy in common as the default for intestacy ownership. That is, real property continues to be classed as heirs' property when someone dies without a will, and this perpetuates tenuous ownership, which again diminishes owners' ability to actualize wealth. Although reduced, the haunt of partition remains. Several attorneys also questioned whether the law's buyout option could potentially alienate families from land. They pointed out that in cases where family members initiate a partition action against other blood relatives, non-petitioning family members can exercise the right to purchase the interests of the petitioning relative, possibly resulting in the loss of land for those who initiated the suit in an effort to consolidate and secure their land interests. A metro Atlanta attorney representing clients with rural land proceeded carefully in applying the law to avoid statutory partition by sale complaints: "I'll ask for a partition in kind, but I will not ask for a statutory partition in an heirs' property action....there's parts of the law that I'll use that are applicable, but there's parts of it that I'll stay away from too because they have a double edged sword, we'll call it...." (GA10). However, an Alabama attorney pointed out the financial burdens placed on families when attempting physical or equitable partition:

⁶ Ten heirs were not a party to proceedings so the court appointed a representative for them, referred to as *ad litem*. Proceeds from the sale were placed in an account for the none presenting heirs.

The new statute, really, to me doesn't look like it's an improvement over the previous law...I mean, in terms of the trouble it's going to be in the expense and the time it's going to take, looks like it'll be about the same--it does give some additional protection to the heirs and sorta spells out the right of the of the family members to buy the property if they wish to. But I can't really tell where it's an improvement over the previous law, frankly.... You know, in theory, it all sounds good. But it's just totally unworkable, due to the expense of it. And plus, you know, let's say, let's say you're doing a partition where you're actually going to divide the land. Okay, not only do you have the legal expenses, but somebody has got to hire a surveyor, to certify this property into ever, how many parcels of equal value or equal acreage. And so if everybody is getting a piece of land, there's no pool of money with which to pay these expenses. So it's got to come out of somebody's pocket. So, who's gonna pay that? If the person initiating the lawsuit has to pay all that, then, you know, it's not worth it for them.

When the partition of heirs Act came out, I was really excited because I thought, okay, somebody came out with a way to simplify this process to really help these families. And then when I started reading through it, I was a little disappointed because it looked like it was still extremely complicated. It gives extra rights to heirs in this situation, but I thought they really already had all those rights, frankly.⁷ But, um, so I didn't see that it was much of an improvement for the situations that we have, that confront us on a weekly basis....So I would say that the impact on the ground to what we deal with on a day-to-day basis is very marginal. Because usually what we're dealing with is smaller tracts that really don't have enough value to make it feasible to have a lawsuit (Interview AL1).

Along similar lines, a Georgia attorney opined:

I will say that the partition action, even with the new law here in Georgia, it is still fraught. And I've found that it is not too helpful for the people who call me because the people who call me, they are proactive, they usually have money to spend to, you know, because they are usually the ones that have been paying the taxes all this time. And they want to get it resolved. And I am always reluctant to suggest file a partition action because with the new law, there's an inherent risk...and under the Georgia partition statute, whenever someone is dragged into court, they then have the right to buy out the person who dragged them into court.... That's what we want it to happen for people who were dragged into court by the big bad developer...and so that's the result that you want, you want the family to be able to huddle up, and, you know, pool their resources together, and buy the person out.... Well, that doesn't work if the plaintiff is a cousin.... And so, if, if you're wanting to sort of take charge, and be proactive, and like, fix it for once, and for all, I have to tell you, you know, what, you know, if we follow this action, then the law gives the defendants your siblings, cousins, aunts, whoever, they can then buy you out. And so, so you have, so they have to decide, do I really want to drag my family in the court? And not only that, I could lose, you know, whatever, you know,

⁷ This attorney goes on in the interview to explain that Alabama's pre-UPHPA partition law gave defendants the buyout option.

whatever position I have, now I can lose it..... I'm very reluctant to advise people to do partition actions, as opposed to quiet titles for that reason (GA2).

But a seasoned attorney pointed out that if used defensively, the UPHPA's buyout option could be used by any co-heir to consolidate that co-heir's interests. Rather than initiating a case where the property would likely be sold, the co-heir wishing to clear title should wait for another heir to file suit and then buy out the "moving" party. Still, another attorney relayed that this tactic could be frustrating for the proactive client who wishes to move quickly.

Most respondents pointed out that litigation may be a moot point considering that legal costs prevent moderate and low-wealth families from pursuing legal action. Before engaging with clients on such cases, for-profit attorneys consider the cost/benefit ratio of taking on a particular case. Attorneys are typically paid a percentage of the sale price if the land is sold, but if the land value is too low to make it cost effective for the attorney to spend the time on the case, the attorney may well refuse the case, which stalls the family's process. Families also make a similar kind of determination in deciding whether to pursue a partition action. If the land is to be partitioned, family members have to pay for the legal fees and court costs. If no heir(s) has the resources or a large enough interest in the land to make it a good investment, then it is likely the family would not pursue partition. Preparing for a partition case is extremely time consuming for the attorney handling the case, and these expenses will of course be passed to the client. One attorney estimated roughly \$10,000 for the most routine partition action. This attorney commented that families have come to his office seeking partition, but when he explains the costs, these families have not been able to follow through. All attorneys we spoke with sought to clarify titles, first, outside of courts if possible, then possibly filing quiet title actions, and partition actions as a last resort, if at all.

Another aspect of UPHPA efficacy has to do with both expert and lay knowledge of the UPHPA. Our attorneys emphasized that the law is only effective to the extent that it is recognized and applied by courts. The legislation specifies that it is the responsibility of courts to bring the law to bear on a given case thought to involve heirs' property. It was crafted in this manner to avoid saddling lay persons with the responsibility of being knowledgeable about partition law—so the act contains an inherent safeguard, activated on behalf of the litigants who might not even be aware of the enhanced set of rights conveyed by the act. This protection is especially important in cases where litigants are not represented by counsel. Again, a court must first determine whether the case fits within the definition of heirs' property, as defined by the law, and if it does, then the law's tenets apply. However, some heirs' property rights advocates have expressed concern that judges may not be conversant with the law because of the paucity of partition cases, generally. While courts are responsible for knowing and applying the law, practically speaking, attorneys for the respective parties point out to judges the relevant legislation in the various documents filed with a court. If a court fails to apply what the attorney believes is the relevant law, in cases where families have attorneys, that attorney could bring the omission to the court. One respondent added that although courts must seek market rate prices for land sales, the law allows local judges a great amount of discretion in terms of allowing or confining the partition sale process (GA2). Another attorney pointed to the need to educate attorneys, in terms of the way that heirs' property can be inadvertently created by wills, for instance when someone leaves real property to their children, collectively. Tenancy in common can also be created via divorce decrees (GA7).

Unanimously, the attorneys interviewed in Kentucky believe that the UHPHA could provide important protections for families against forced partitions and loss of family land, although one attorney did note that partition actions are very infrequent and, for this reason, the law might not see widespread use (KY2). One attorney, speaking about a partition case filed by a coal company against a family, said that the UHPHA, “would be helpful because it would prevent the outcome that we were most fearing, which was basically a bidding war between our clients, who really did not have a lot of money and the coal company, which had...a lot more resources.” (KY1).

All of the attorneys we spoke with about Kentucky highlighted the past and present “fraught relationship between surface and mineral owners (KY4).” One attorney drew a connection between the very low frequency of partition actions and a common form of agreement between landowners and oil and gas companies: leasing (KY5). Multiple Kentucky attorneys raised the issue that it only takes the permission of one heir to allow a coal, oil, or gas company to lease the mineral rights of property owned in heirship, which can easily result in exploitation of the land without the consent of all, or even a majority, of the heirs. Additional protections against this manner of resource extraction in Kentucky heirs’ parcels were strongly urged by interviewees, especially in cases where companies elect to strip-mine for coal on the property. Strip-mining, one attorney suggested, was tantamount to “waste” or laying waste to the entire property, though Kentucky case law has not defined strip-mining as such (KY4). Furthermore, split estates, in which the surface and mineral rights of a piece of land are owned separately, negate the need for forced partition actions by mineral interests.

Attorney recommendations for UHPHA and property law revision

When asked about recommendations for modifying the UHPHA, most of those we talked with believed that improving the UHPHA was less important than halting or limiting tenancy in common as the normative outcome of intestate succession. They recognized that the legislation addressing partition actions is just one way of addressing heirs’ property deficiencies and that it was not intended to, nor does it solve the larger problem of the lack of estate planning. As one Alabama respondent commented: “What I consider the UHPHA to be is like, I’ll just be perfectly honest, it’s a bandaid... imagine like a gushing wound and you’re putting a bandaid on it. That’s basically what the UHPHA is. It’s a great law, but it’s [heirs’ property] a huge problem, [and the UHPHA] can’t solve everything” (AL3). Another attorney also used a first aid metaphor to describe needed reforms: “...the default being tenancy in common, is a difficult hurdle to overcome if estate planning isn’t implemented. And so it’s kind of like, you know, we’re talking right now about a suture [UPHPA], but what we need to be talking about is not running with the scissors. And so I think that for me, not running with the scissors is the estate planning” (GA6). This attorney suggested that legislation analogous to the 1983 Indian Land Consolidation Act is needed to consolidate fractionated, black land interests. The attorney further stressed that estate planning and education programs need to be sufficiently funded so that these services are not interrupted but also cautioned that *carte blanche* funding for heirs’ property redress could lead to abusive solicitations on the part of attorneys, especially from for-profit firms. The attorney pointed to the abuses of funding seen in the 1987 *Pigford vs. Glickman* settlement where attorneys ostensibly offered their services to affected families but in actuality further exploited their plight. To avoid this, the attorney suggested that intermediary organizations act as a referral clearinghouse to vet and refer clients to attorneys. There was also the recognition that attorneys

are prohibited ethically from soliciting services and that their heirs' property clearance work has to be couched as technical rather than legal assistance.

One attorney suggested legislative reform aimed at addressing the straits of smaller, rural landowners, essentially allowing heirs who have paid property taxes for at least ten years to claim adverse possession by filing and publishing an affidavit of heirship. There was also the suggestion that UPHPA definitions be modified so that the blood kin could not buy out the petitioning family member. Finally, some attorneys also felt strongly that the problems of heirs' property ownership are well understood and that fewer resources should be devoted to research, relative to education and estate planning assistance.

Similar to Georgia and Alabama attorneys, Kentucky attorneys see the problems associated with heirs' property as "a lot bigger than partition actions" (KY2). One Kentucky attorney felt that a positive impact could be made for heirs' property owners if a *pro bono* legal services organization existed to help clear titles. This interviewee also pointed out that education of heirs' would be a crucial component of such an organization, saying, "...people, I think, know that they own property with their cousins...but they don't know the ramifications of that. They have no idea of the dangers of that kind of ownership. They have no idea that it could be sold out from under them, for example" (KY2). Another Kentucky attorney suggested, either as a modification to the UPHPA or a separate piece of legislation, that a more equitable arrangement be put in place to protect heirs and their property with respect to mineral leasing agreements, since it takes the consent of only one heir to agree to lease mineral rights on a piece of property (KY5).

Related to additional legislative reform addressing broader problems associated with heirs' property ownership, the Uniform Law Commission (ULC) accepted Professor Thomas Mitchell's proposal in 2021, requesting the ULC to establish a drafting committee to draft a uniform act (model state statute) that would make changes to tenancy-in-common ownership default rules (Thomas Mitchell, personal communication). The so-called default rules are rules a state establishes if someone owning real property dies leaving two or more heirs and either dies without a will or dies leaving a will that does not get probated in a timely manner. Heirs' property is a subset of tenancy-in-common ownership governed by these default rules. These are rules that tenants in common, that have access to competent lawyers, would never accept as a whole because they make the ownership very unstable and do not allocate rights and responsibilities in connection with the property in a rational way.

Under current laws, unanimous agreement from all co-tenants is needed to engage in substantial matters implicating the property, including management and use issues. Existing laws effectively grant any one co-tenant veto rights, even if that co-tenant only owns a very small fractional interest in the property. Professor Mitchell describes this scenario as "gridlocked ownership." For example, unanimous agreement is needed to use the entire property as security for a loan, (a common way that real property owners are able to leverage wealth) or to change the legal status of such properties to more stable and rational forms such as a trust, limited liability company, or a tenancy-in-common agreement.⁸ Recognizing these challenges, Professor Mitchell proposed that the ULC consider establishing legislation that would allow co-heirs to make substantive administrative decisions or to engage in certain uses

⁸ A privately negotiated agreement that enables the cotenants to reject a number of the default tenancy-in-common rules and to substitute their own rules

without unanimous approval from all co-heirs but instead would allow for more *democratic* management by allowing decisions to be made with majority or supermajority support among the group of tenants in common. Such a law would provide families with much more flexibility in managing and using property, particularly in cases where co-heirs cannot be located or where a small minority of owners hold intractable positions. The urgency of this legislation in redressing the larger suite of heirs' property problems is indicated by the fact that in 2021 the ULC accepted approximately 5% of submitted proposals.

This legislation would address stagnancy in heirs' property administration; however, as the Kentucky attorneys point out, unilateral decision making related to leases for mineral exploration is highly problematic in Appalachia. This is an important issue that could also be taken up in the proposed legislation.

Attorney survey

The survey sent to the State Bar of Georgia Real Property listserv (800 potential recipients) received nine responses, which is a much lower number than we had hoped for. Of the attorneys who responded, 77.8% were familiar with partition actions involving heirs' property and 66.7% had litigated a partition case involving heirs' property. When asked about familiarity with the UHPA, 44.4% reported that they were reasonably familiar, 33.3% were somewhat but not very familiar, and 22.2% were not at all familiar with the act. Of the five attorneys who had some familiarity with the UHPA, 60% feel that the UHPA does not address partition problems at all, while the other 40% believe it provides some improvements.

Conclusion

In the court records searches completed in Georgia, we found very few partition actions in our selected counties. This decreases the robustness of our initial plan to compare the rate of partition actions before and after adoption of the UHPA. However, designing a methodology and gathering these records has spurred new insights and questions. For instance, formulating a systematic methodology to find documentation of partition actions at the county level has been a challenge. In Georgia, we learned about the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA) database which does offer a compilation of court records for every county beginning in 1990, although it requires a paid subscription. Our team of researchers needed the assistance of an attorney to determine which documents to search to find any partition actions that took place in our counties. This search process was time consuming because the database requires the user to search in 3-month intervals and look at the official documents associated with every search result. That said, the GSCCCA records allowed us to search county-level documents by keyword. Neither Alabama nor Kentucky have a comparable system. The findings from this portion of our project raise important questions about accessibility of court records for both the public and professionals attempting to identify temporal or spatial patterns in partition actions.

The heirs' property frequency estimates completed in Alabama, Georgia, and Kentucky revealed interesting patterns that may correlate with other variables indicative of vulnerability. For the final report, we will examine statistical associations between county-level heirs' property estimates and indicators of race, class, rural status, and histories of extraction. We believe our

frequency estimates are conservative due to the search terms we used and limitations in the data. Our continuing inquiries into Property Valuation Administrator protocols in Kentucky may help us better understand counties' capacity to account for heirs' property, which would not only help us assess the accuracy of our estimates but also formulate recommendations related to data standardization.

Attorney interviews in Alabama, Georgia, and Kentucky illuminated many nuances related to heirs' property and the UHPA. Two of our preliminary findings, the low number of partition actions in counties and regions of interest and the hesitancy of heirs property family interviewees to speak openly of sensitive legal and interpersonal issues, are obstacles we could face in our efforts to incorporate grounded, experiential perspectives from individuals and families into our final research findings and recommendations.

Recommendations

At least seven recommendations are emerging from this work.

1. **Expansion of information and public funding to assist families with estate planning and title clearance.** Some attorneys we interviewed believe that good progress on this front is being made in deep South states such as Alabama, South Carolina, Georgia, and Alabama--due in part to the efforts of organizations like the Federation of Southern Cooperatives/Land Assistance Fund, the Center for Heirs' Property Preservation, and the Georgia Heirs Property Law Center. However, the existence of heirs' property outside of the South was raised by one attorney. There is little or no information about reduced or no fee legal service providers in Appalachia or elsewhere outside the South. Public funding is needed to provide these resources although again, it was suggested that such funding be dispersed by reputable land rights advocacy organizations to vetted attorneys.
2. **Attorney and court education.** Roughly half of the attorneys we interviewed have not filed a case under the UHPA and believe that it is not widely known among attorneys in their states. Further, although the UHPA states that it is the responsibility of the courts to determine whether a case falls under the UHPA, our attorney interviews indicated that judges may not know about this law unless an attorney introduces it in a case, or unless a judge has presided over cases that have invoked it previously. Again, the above named non-profit organizations provide education focused on heirs' property and land retention.
3. **Legislative reform.** As a practical solution to title clearance, one attorney suggested that local level tax law be revised to allow the co-heirs who pay taxes to obtain adverse possession of the property. Also, the possible purchase of heirs' property titles modelled on the Indian Land Conservation Act was proposed as one way of addressing the larger problem of existing, fractionated land titles. Congress passed Indian Land Consolidation Acts in 1983, 1984, and 2000 as one way to help rectify the abysmal failings of the 1897 Dawes Act, which instigated heirs' property or fractionated land

titles held by Native individuals (Shoemaker, 2003). The Consolidation acts authorize the federal government to purchase or “buy back” fractionated land titles from Native allottees in exchange for consolidated tribal acreage (U.S. Department of the Interior 2012). However, a challenge to these federal buy back initiatives has been bureaucratic encumbrance. The 2010 Claims Restoration Act also authorizes the U.S. Department of the Interior to use a \$1.9 billion Trust Land Consolidation Fund to purchase fractional land interests from Native Americans and place them into tribal trusts (Indian Land Tenure Foundation 2015, U.S. Department of the Interior 2012).

4. **Greater data transparency, standardization, and accessibility.** One way researchers quantify the amount of heirs’ property in a given county is to consult parcel data maintained by the tax assessor (or property valuation administrator in Kentucky), which often contains an indication of heirs’ property within the owner name field. However, collection and maintenance of these parcel records are not standardized across counties or states, and the records are often not accessible online. When they are available online, there may be costs for viewing or downloading. We have also come up against numerous challenges in our efforts to systematically find records of partition actions in Georgia, Alabama, and Kentucky. Assessing the efficacy of the UHPA and better understanding the history and patterns of partition actions would be greatly aided if county-level court records were consistently recorded, digitized, and made available in a user-friendly online database.
5. **Census of Agriculture collection of data on heirs’ property ownership.** As stated, our use of aggregated data to estimate the number of heirs’ parcels revealed inadequacies in data quality--in terms of the consistency and uniformity of parcels classed as heirs parcels and completeness of complementary data on land values and acreage. Given that sound policy must be based on an accurate accounting of the extent of these parcels, these data should be collected in a uniform manner, for instance by the Department of Commerce (Decennial Census) or U.S. Department of Agriculture (Census of Agriculture). One attorney expressed reservations about African American landowners providing data on heirs’ property ownership because of their distrust of the federal government. We would counter that any information individuals provide would be protected by extant regulations covering all data collected by censuses.
6. **Long-term monitoring of heirs’ property ownership.** The last comprehensive heirs’ property assessment was published in 1980 by the Emergency Land Fund (Emergency Land Fund, 1980). Since then, there has been no in-depth, concerted effort to estimate the number of heirs’ property parcels in the South or elsewhere in the U.S.⁹ Yet, as many have argued, real property ownership is crucial in Americans’ ability to create

⁹ The second author used aggregated tax parcel data for the 13 states of the South to estimate heirs’ property extent. Roughly 239,000 heirs’ property parcels were found, totaling 3.5 million acres with an assessed value of \$28 billion were identified.

wealth and social stability--and anything that threatens that ability should be carefully monitored. One attorney interviewed for this project described people's homes and the land it rests on as non-fungible, meaning the bonds that people have to their homes are distinct from their relationships with other types of possessions. Real property conveys identity in a way that other goods or property do not. Given the threats posed by heirs' property, we propose that long-term monitoring of heirs' property and related forms of ownership be either undertaken or supported by the federal government. The monitoring would be analogous to the Long-Term Ecological Research programs conducted in various places across the country which evaluate changes in key ecological conditions over time. Longitudinal monitoring of tenancies in common would allow policymakers to see trends in this form of ownership, evaluate efforts to mitigate it, and correlate title clearance programs with changes in local level revenue capture. Long-term monitoring would look at various facets of heirs property ownership, not just the number of heirs' parcels; these would include title clearance process, family dynamics after title clearance, and use of cleared titles to stabilize or build wealth. For such an evaluation to be successful, other improvements such as the standardization of heirs' property indicators must be in place.

7. **Response to shifting economies and heirs' property owners in Appalachia and the Black Belt.** This project has allowed us to consider the broader social and economic context of heirs' property ownership in both the Black Belt and Central Appalachia. Appalachian economies based on resource extraction have largely shifted to service economies (e.g., outdoor recreation, tourism), and there is growing interest by states and corporations in purchasing land in Appalachia for carbon offsets. Also, the steady migration of people to southern cities and suburban areas across the South has had the effect of converting timber and cropland into suburban developments and changed the way timber companies operate on the ground. As well, the surplus of timber across the South has lowered prices for non-industrial forestland owners into the foreseeable future. Yet, programs like the Sustainable Forestry and Land Retention Program incentivizes Black Belt African American landowners to plant forests, arguing that forest markets are an untapped revenue source for black landowners. The program includes legal assistance for clearing heirs' property titles for participants. In both the Black Belt and Appalachia, these changes compel an examination of how low-wealth landowners such as those with heirs' property, will fit into these shifting economies. An extension of the current investigation is needed to examine these trends.

Appendix

Attorney survey distributed as a Google form via Georgia State Bar real property section listserv

1. In what county do you practice law?
 - (Dropdown list of counties)
2. Are you familiar with partition actions involving [heirs property](#), defined as property inherited via states laws of intestate succession?
 - Yes
 - No
 - Not sure
3. Have you ever litigated a partition case involving heirs property?
 - Yes
 - No
4. Are you familiar with the [Uniform Partition of Heirs Property Act](#) (UPHPA) adopted by the Alabama/Georgia legislature in 2012/2014?
 - Not at all
 - Somewhat but not very familiar
 - Reasonably familiar
5. Have you used the UPHPA in either of the following ways?
 - Used or referenced it as a litigator representing a client
 - Considered it in my role as a “special master” or another impartial observer
 - Been involved in both these ways
 - Other (please describe) _____
 - Have never used or referred to the law
6. If you are familiar with the UPHPA, how well do you think it addresses partition problems?
 - Not at all
 - Provides some improvements
 - Greatly improves state’s partition laws
7. Are there any changes that should be made to the UPHPA—if so, please elaborate?



Examining the Efficacy of the Uniform Partition of Heirs’ Property Act in Georgia, Alabama, and Kentucky

Background: The goal of this interview is to understand your experiences and perceptions as an attorney who handles cases involving real property—we are especially interested in any knowledge or experiences you may have had with the Uniform Partition of Heirs’ Property Act or the UPHPA. If you have not used the UPHPA in your practice, that is fine. Again, we are mostly interested in understanding how the law may or may not be used by practitioners. This information is part of a research project supporting Alcorn State University’s Disadvantaged Farmers and Ranchers Policy Center’s input into the 2023 Farm Bill. We will maintain strict confidentiality regarding the content of this interview. We would like you to share any information you feel is relevant to your experiences with heirs’ property, but you are not obligated to disclose information or discuss topics that you would rather keep private. None of the information we solicit will be construed as legal advice.

1. Professional Background

- a. Where do you currently practice law?
- b. How long have you practiced there?
- c. Are there areas that you specialize in?

2. Historical + Economic + Social Context

- a. Can you talk a little bit about the county and region of [AL/GA] where you practice law?
- b. Do you have a sense of what people do for a living—e.g., major industries, job sectors?
- c. Is poverty a significant issue in the counties where you work?
- d. What about the area’s natural resources—e.g., timber or other raw materials--is there a huge demand for these resources?
- e. How about population shifts—are people moving in/out? Why might this be the case?

3. Family Experiences with Heirs’ Property

- a. Can you describe the families, generally, that come to you with heirs’ property issues?
 - a1. Do they tend to be local, that is, in your county?
- b. Do you have conversations about their family heritage or future?

4. Regularization of Heirs’ Property Title

- a. When someone brings a titling issue to you, what might this look like—what do they typically want done?
- b. How do you handle cases where title clearance is requested?
- c. How do partition actions play a role in title clearance?
- d. Is there anything, generally, that distinguishes those families who primarily want partition versus those that want title clearance?
- e. How often do people come wanting to partition the property, as opposed to seeking title clearance?
- f. How common are partition cases--how many have you handled?
- g. How is property typically partitioned--in terms of in-kind versus a sale?
- h. Are you familiar with the contents of the UHPA?
- i. Whose responsibility is it--courts or plaintiffs--to know about the UHPA? Does this responsibility lie with the plaintiff's attorney or with the courts?
- j. Have you used the UHPA in any partition case?
- k. How well does the UHPA address partition problems?
- l. Do you recommend changes to the law—if so, what?

5. Financial Impacts of Heirs' Property

- a. What percentage of the land in the county or region you serve/work in do you estimate to be heirs' property?
- b. What impact does heirs' property have on county revenues?
- c. Do you know of attorneys in your part of the state, who offer pro bono services to resolve heirs' property cases?

Thank you for contributing your time and depth of knowledge to this project. We are grateful to you and look forward to sharing our findings with you. The interviewer may be in touch with you to ask clarifying questions over the coming weeks. We will share a copy of our final report with you in August of 2021. If you have any questions or would like to share any additional information in the meantime, please contact Megan White at mwhite@likenkfnowledge.org, Cassandra Johnson Gaither at cassandra.johnson@usda.gov, or Karen Rignall at karen.rignall@uky.edu.

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Alcorn.

SOCIALLY DISADVANTAGED FARMERS
AND RANCHERS POLICY RESEARCH CENTER



LiKEN

Livelihoods Knowledge Exchange Network

Examining the Efficacy of the Uniform Partition of Heirs' Property Act in Georgia, Alabama, and Kentucky

Background: The goal of this interview is to understand your experiences and perceptions as someone who owns or has owned heirs' property—we are especially interested in your experiences with the Uniform Partition of Heirs' Property Act or the UHPA. With the information and stories we gather, we hope to assess how helpful the law has been for families. We also hope to identify ways in which property owners can receive better support to solve heirs' property problems. We will maintain strict confidentiality regarding the content of this interview. We would like you to share any information you feel is relevant to your experiences with heirs' property, but you are not obligated to disclose information or discuss topics that you would rather keep private.

1. Demographic Information

- When were you born?
- Where did you grow up?
- What do you do for a living?

2. Historical + Economic Context

- When was your family's heirs' property originally acquired, and by whom?
- Where is (or was) your family's heirs' property located?
- What is this place (town, county, etc.) like?
- How has your family used this property? (And has it provided any resources or income?)
- How has the use of this property changed over the years?
- What kind of pressures about keeping the property has your family faced?
 - If you have experienced pressures, are there additional resources you didn't have that you think could have been helpful?

3. Family Experiences with Heirs' Property

- What does your family's property mean to you?
- Do you think your family members feel similarly?
- What kinds of conversations, if you have them at all, do you have with your family about the property?
- How connected are younger family members to this property? For instance:
 - Do you have conversations about it with them?
 - Are they aware of the family legacy associated with it?

- Looking back and knowing what you now know, are there things that you now wish that your family could have handled differently when it comes to the care or management of this property? For instance, are there resources that would have been helpful?
- Are there different things that you might have used that might have worked out better? If you had advice to give people in a similar situation, what might you tell them, based on your own experience?

4. Financial Impacts of Heirs' Property

- Has your family ever been unable to obtain credit or a loan because of your property being in heirship?
- Has your family ever been unable to access financial or other assistance due to your property being in heirship?
- Have there been any other financial impacts on your family?
- What do you wish could be (or could have been) different about the financial impacts involving your heirs' property?

5. Regularization of Heirs' Property Title

- How did or is your family working through the legal system to clear title?
 - What did you have to do?
 - Who did you have to interact with?
 - Describe what it was like for you to interact with this person/entity.
 - Did you use legal assistance?
 - How would you describe this process?
- What do you wish could have been different about the experiences you had as you worked through these legal processes?

6. Future of Heirs' Property

- In an ideal world, what would your dream be for this property in the future?
- What do you think would be the best outcome for all the people linked to this property?

Thank you for contributing your time and depth of knowledge to this project. We are grateful to you and look forward to sharing our findings with you. The interviewer may be in touch with you to ask clarifying questions over the coming weeks. We will share a copy of our final report with you in August of 2021. If you have any questions or would like to share any additional information in the meantime, please contact Megan White at mwhite@likenknowledge.org, Cassandra Johnson Gaither at cassandra.johnson@usda.gov, or Karen Rignall at karen.rignall@uky.edu.

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References

- Appalachian Land Ownership Task Force. 1983. *Who Owns Appalachia? Landownership and Its Impact*. Lexington, KY: University of Kentucky Press.
- Baab, C. H. 2011. Heir property: A Constraint for planners, an opportunity for communities: The Legacy of Steve Larkin. *Planning and Environmental Law*, 63(11): 3-11.
- Bailey, C., Barlow, B., and Dyer, J. 2019. Practical constraints to timber management among African American owners of heir property. *Landscape and Urban Planning*, 188:180-187.
- Billings, D. G., M.B. Pudup & A. K. Waller (1995). Taking Exception with exceptionalism: The emergence and transformation of historical studies of Appalachia. In M. B. Pudup, D. B. Billing & A. L. Waller (Eds.), *Appalachia in the making: The mountain South in the nineteenth century* (pp.347-380). University of North Carolina Press.
- Casagrande Jr., J.G. 1986. Acquiring property through forced partitioning sales: Abuses and remedies. *Boston College Law Review*, 27(4): 755-83.
- Chandler, A.B. 2005. "The Loss in my bones": Protecting African American heirs' property with the public use doctrine. *William & Mary Bill of Rights Journal*, 14(1):387-414.
- Chastain Baker and Vincent McBride, S. 2013. A Primer on heirs property and Georgia's new uniform partition of heirs property act. *Georgia Bar Journal*, October 2013, 19(2):16-22.
- Craig-Taylor, P. 2000. Through a colored looking glass: a view of judicial partition, family land loss, and rule setting. *Washington University Law Quarterly*. 78(2): 737-788.
- Daniel, P. 2013. *Dispossession: discrimination against African American farmers in the age of civil rights*. Chapel Hill: The University of North Carolina Press. 332 p.
- Donald, D. H. (1996). *Lincoln*. Touchstone.
- Dunaway, W. A. (1995). Speculators and settler capitalists: Unthinking the mythology about Appalachian landholding, 1790-1860. In M. B. Pudup, D. B. Billing & A. L. Waller (Eds.), *Appalachia in the making: The mountain South in the nineteenth century* (pp.347-380). University of North Carolina Press.
- Dyer, J. 2008. Statutory impacts of heir property: an examination of appellate and Macon County. Paper presented at Paper presented at the 66th Annual Professional Agricultural Workers Conference Tuskegee University December 7-9, 2008. Available online at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.569.1533&rep=rep1&type=pdf>. Date accessed 18 May 2018.
- Eller, R. D. (1982). *Miners, millhands, and mountaineers: Industrialization of the Appalachian South, 1880-1930*. University of Tennessee Press.

Emergency Land Fund. 1980. The impact of heir property on Black rural land tenure in the southeastern region of the United States. 569 p. <http://hdl.handle.net/2027/coo.31924067935720>. Date accessed July 2014.

Gaventa, J. and B. Horton (1984). Land ownership and land reform in Appalachia. In C. C. Geisler and F. J. Popper (Eds.), *Land reform, American style* (pp. 233-244). Rowman and Allanheld.

Georgia Appleseed Center for Law & Justice. 2013. Unlocking heir property ownership: assessing the impact on low and mid-income Georgians and their communities. 18 p. <http://www.gaappleseed.org/media/docs/unlocking-heir-property.pdf>. Date accessed 18 May 2018.

Halperin, R. (1990). *The Livelihood of kin: Making ends meet "The Kentucky Way"*. University of Texas Press.

Hufford, M. (1997). *American Ginseng and the Idea of the Commons*. Library of Congress. <https://www.loc.gov/collections/folklife-and-landscape-in-southern-west-virginia/articles-and-essays/american-ginseng-and-the-idea-of-the-commons/>

Kentucky Energy and Environment Cabinet (2017). *Kentucky Coal Facts*. Produced the Department for Energy Development and Independence in partnership with the Kentucky Coal Association. 17th Edition.

Lewan, T. and Barclay, D. 2001. Torn from the land: Black Americans' farmland taken through cheating, intimidation, and even murder. Originally published by the Associated Press. Available online at: <http://www.commondreams.org/headlines01/1202-03.htm>. Date accessed 17 April 2014.

Lewis, R. *Black coal miners: Race, class, and community conflict 1780-1980*. University Press of Kentucky.

Linklater, A. (2013) *Owning the Earth: The transforming history of land ownership*. Bloomsbury.

Mitchell, T.W. 2005. Destabilizing the normalization of rural Black land loss: A critical role for legal empiricism. *Wisconsin Law Review*. 2005(2): 557-615.

Mitchell, T.W. 2014. Reforming property law to address devastating land loss. *Alabama Law Review*. 66(1): 1-61.

Mitchell, T.W. 2019. Historic partition law reform: A Game changer for heirs' property owners. In: Johnson Gaither et al. (2019), pp.66-82, Heirs' property and land fractionation: Fostering stable ownership to prevent land loss and abandonment. USDA Forest Service, e-General Technical Report SRS-244. September 2019. Available online at <https://www.fs.usda.gov/treesearch/pubs/58543>. Date accessed 18 May 2021.

Nembhard, J.G.; Otabor, C. 2012. The Great Recession and land and housing loss in African American communities: case studies from Alabama, Florida, Louisiana, and Mississippi. Part 2: heir property. Working paper from the Center on Race and Wealth, Howard University. 24 p. <http://www.coas.howard.edu/centeronraceandwealth/reports&publications/0712-great-recession-and-landhousing-loss-in-african-american-communities-part2.pdf>. Date accessed 20 June 2013.

Rivers, F. R. 2006. Restoring the Bundle of Rights: Preserving Heirs' Property in Coastal South Carolina. Available online at: http://www.americanbar.org/content/dam/aba/events/real_property_trust_estate/symposia/2006/12_property_preservation.authcheckdam.pdf. Date accessed April 11, 2020.

Salstrom, P. (1994). *Appalachia's path to dependency: Rethinking a region's economic history 1730-1940*. University Press of Kentucky.

Schelhas, J., Hitchner, S., Johnson Gaither, C., Jennings, V. 2017. "Sunshine, Sweat, and Tears": African-American ties to land and forests in the south. e-General Technical Report SRS-220. <https://www.fs.usda.gov/treearch/pubs/54140>. Date accessed April 12, 2020.

Scott, S. L. (1994). *Two sides to everything: The cultural construction of class consciousness in Harlan County, Kentucky*. State University of New York Press.

Seabrook, C. and Louza, M. 1995. Red clay, pink cadillacs, and white gold: The Kaolin chalk wars. Athens: Longstreet Press.

Shoemaker, J.A. 2003. Like snow in the spring time: allotment, fractionation, and the Indian land tenure problem. *Wisconsin Law Review*. 2003(4): 729-788.

Stewart, K. (1996). *A space on the side of the road: Cultural poetics in an "Other" America*. Princeton University Press.

Turner, W. H. & E. Cabell (1985). *Blacks in Appalachia*. University Press of Kentucky.

U.S. Census Bureau, 1914. 1910 Census of Agriculture. Volume 5, General Reports and Analysis. Chapter 3—Number, Acreage, and Value of Farms Classified by Color and Tenure of Operator, p. 182, Table 16. <http://agcensus.mannlib.cornell.edu/AgCensus/censusParts.do?year=1910>. Date accessed April 11, 2019.

United States Department of Agriculture. National Agricultural Statistics Service. 2019. U.S. Census of Agriculture, Volume 1: U.S. National Level Data. Table 51. Black of African American Producers: 2017. https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_0051_0051.pdf. Date accessed 18 May 2021.

U.S. Department of the Interior. 2012. Initial implementation plan: land buy-back program for Tribal Nations. 44 p.

<http://www.doi.gov/buybackprogram/upload/InitialImplementation-Plan-508.pdf>. [Date accessed: August 18, 2015].

Waller, A. (1995). Feuding in Appalachia: Evolution of a cultural stereotype. In M. B. Pudup, D. B. Billing & A. L. Waller (Eds.), *Appalachia in the making: The mountain South in the nineteenth century* (pp.347-380). University of North Carolina Press.

Wimberley, R. 1997. The southern Black Belt: A national perspective. Tennessee Valley Authority, University of Kentucky, p.49.

Winemiller, T. L. 2019. Black Belt region in Alabama. Encyclopedia of Alabama. <http://encyclopediaofalabama.org/article/h-2458>.

Zabawa, R. 1991. The Black farmer and land in south-central Alabama: Strategies to preserve a scarce resource. *Human Ecology*, 19(1): 61-81.

Endnote:

- + The following is from a verbatim memo written by Diana Santos dated July 20, 2007 describing the University of North Carolina's efforts to document partition actions. We obtained the memo from Janice Dyer in 2020. "Since 2006, UNC [University of North Carolina] Center for Civil Rights has been a part of the Heirs Property Retention Coalition (HPRC), a coalition of advocacy groups, legal service practitioners, and academics, who work to address the serious deficiencies and inequities in state partition sale laws. HPRC is composed of the leading legal scholars and experts on property and partition litigation and includes members such as Dawn Battiste of Land Loss Prevention Project; Phyllis Craig-Taylor, North Carolina Central University law professor and author of *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting*; Carolyn Gaines-Varner of Legal Services of Alabama; Horace Jones, vice president of Gateway Development; Thomas Mitchell, University of Wisconsin law professor and former director of the University of Wisconsin's Land Tenure Center; Jerry Pennick and Miessha Thomas of the Federation of Southern Cooperatives and Land Assistance Fund; John Pollock of the Fair Housing Center of Alabama; and Jennie Stephens of Center for Heirs Preservation Property."